CLERK'S COPY

13162

55

1105

DC

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 95.

AMERICAN ICE COMPANY AND WILLIAM G. JOHNSON, ASSIGNEE, APPELLANTS,

vs.

EASTERN TRUST AND BANKING COMPANY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MAY 11, 1901.

(18,152.)

13163

(18,152.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 95.

AMERICAN ICE COMPANY AND WILLIAM G. JOHNSON, ASSIGNEE, APPELLANTS,

vs.

EASTERN TRUST AND BANKING COMPANY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption (No. 1013)	*a*	*a*
Transcript from supreme court of the District of Columbia (No. 17259).	*a*	*a*
Transcript on appeal and cross-appeal, Nos. 800 and 801 in Court of Appeals, No. 17259 in supreme court of the District of Columbia	1	1
Original bill to foreclose, &c.	1	1
Exhibit A—Transcript in case of Eastern Trust and Banking Co. *vs.* Willis *et al.*, No. 425 in Court of Appeals, Nos. 36903 and 36904 in supreme court of the District of Columbia	11	11
Caption	11	11
Complaint of landlord against tenant, judgment 36903	11	11
Plea of title	12	12
Declaration in plea of title	14	14
Statement of fact, etc	15	15

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 10, 1902.

	Original.	Print
Exhibit No. 1—An act to incorporate the Eastern Trust and Banking Company	18	18
No. 2—Trust mortgage	21	21
No. 4—Agreement between William G. Johnson, assignee, and Edward M. Willis	29	29
Judgment, 36903	31	31
Judgment, 36904	32	32
Notice of appeal	32	32
Citation	33	33
Opinion, 36903 and 36904	33	33
Stipulation, 36903 and 36904	36	36
Clerk's certificate, 36903 and 36904	37	37
Separate answer of Corcoran Fire Insurance Company	37	37
Joint and separate answer of the defendants, American Ice Company and Edward M. Willis	39	39
Separate answer of William G. Johnson, assignee	45	45
Deposition of George B. Canney and stipulation	49	49
Notary's certificate	55	55
Foreclosure account expenses, American Ice Company	55	55
Trustee's sale of real estate of the American Ice Company	57	57
Notice of adjourned trustee's sale	59	59
Notice of sale of wharf property of the American Ice Company	59	59
Complainant's Exhibit 1—Request of committee to sell property separately	60	60
Examiner's certificate	61	61
Stipulation of counsel	61	61
Testimony of John Miller	62	62
Examiner's certificate	72	72
Exhibit J. A. L. No. 9—Stipulation as to use of printed record	72	72
No. 10—Stipulation as to payment of amount of insurance policies to William G. Johnson	73	73
Decree for sale	74	74
Appeal by complainant and defendants	76	76
Memoranda: $100 deposited by complainant in lieu of appeal bond	76	76
$100 deposited by defendant Johnson in lieu of appeal bond	76	76
Stipulation as to transcript of record	77	77
Clerk's certificate	79	79
Testimony on behalf of complainant	80	81
Testimony of George B. Canney	80	81
Benning C. Additon	102	92
Exhibit G. B. C. No. 1—Statement of account between Eastern Banking and Trust Company and American Ice Company	107	94

	Original.	Print
Exhibit G. B. C. No. 2—Voucher for disbursement by Eastern Trust and Banking Company	109	95
No. 3—Voucher for disbursement by Eastern Trust and Banking Company	109	95
No. 4—Voucher for disbursement by Eastern Trust and Banking Company	110	95
No. 5—Voucher for disbursement by Eastern Trust and Banking Company	110	95
No. 6—Voucher for disbursement by Eastern Trust and Banking Company	111	96
No. 7—Voucher for disbursement by Eastern Trust and Banking Company	111	96
No. 8—Voucher for disbursement by Eastern Trust and Banking Company	112	96
No. 9—Voucher for disbursement by Eastern Trust and Banking Company	112	97
No. 10—Voucher for disbursement by Eastern Trust and Banking Company	113	97
No. 11—Voucher for disbursement by Eastern Trust and Banking Company	113	97
No. 12—Voucher for disbursement by Eastern Trust and Banking Company	114	97
No. 13—Voucher for disbursement by Eastern Trust and Banking Company	114	98
No. 14—Voucher for disbursement by Eastern Trust and Banking Company	115	98
No. 15—Voucher for disbursement by Eastern Trust and Banking Company	115	98
No. 16—Voucher for disbursement by Eastern Trust and Banking Company	116	99
No. 17—Voucher for disbursement by Eastern Trust and Banking Company	116	99
No. 18—Voucher for disbursement by Eastern Trust and Banking Company	117	99

	Original.	Print
Exhibit G. B. C. No. 19—Voucher for disbursement by Eastern Trust and Banking Company	117	99
No. 20—Voucher for disbursement by Eastern Trust and Banking Company	118	100
No. 21—Voucher for disbursement by Eastern Trust and Banking Company	118	100
No. 22—Voucher for disbursement by Eastern Trust and Banking Company	119	100
No. 23—Voucher for disbursement by Eastern Trust and Banking Company	119	100
No. 24—Voucher for disbursement by Eastern Trust and Banking Company	120	101
No. 25—Voucher for disbursement by Eastern Trust and Banking Company	120	101
No. 26—Voucher for disbursement by Eastern Trust and Banking Company	121	101
No. 27—Receipts for dividends	122	102
No. 28—Sale of property of the American Ice Company and disbursements	124	102
No. 29, No. 1—Transcript of entries relating to American Ice Company as they appear on the cash book of the Eastern Trust and Banking Company	126	104
No. 29, No. 2—Transcript of entries appearing on record of foreclosure book of the Eastern Trust and Banking Company	129	106
No. 29, No. 3—Transcript of entries appearing on record of foreclosure book of the Eastern Trust and Banking Company	130	106
No. 30—Power of attorney	131	107
Order referring cause to auditor	133	108
Order amending reference to auditor	134	109
Auditor's report	135	109
Schedule A with auditor's report	147	115
Schedule B with auditor's report	149	117
Testimony of John Miller	150	118
Cause calendared	152	119
Motion to strike from calendar	152	119
Decree of sale	155	123
Appeal and order for citation	159	123
Citation	160	123

	Original.	Print
Memorandum: Deposit in lieu of appeal bond	161	124
Stipulation as to what shall constitute record on appeal	161	124
Order extending time for filing transcript in Court of Appeals	162	124
Clerk's certificate	163	125
Minutes of argument	126	127
Opinion	127	127
Decree	130	132
Order allowing appeal	131	132
Bond on appeal	132	132
Citation and service	133	133
Clerk's certificate	134	134

In the Court of Appeals of the District of Columbia

AMERICAN ICE COMPANY and WM. G. JOHNSON, Assignee, Appellants,
vs.
EASTERN TRUST AND BANKING COMPANY.
} No. 1013.

---

a Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY
vs.
AMERICAN ICE COMPANY ET AL.
} No. 17259. In Equity.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

In the Court of Appeals of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Appellant,
vs.
AMERICAN ICE COMPANY *et al.* } No. 800.

and

AMERICAN ICE COMPANY *et al.*, Appellants,
vs.
EASTERN TRUST AND BANKING COMPANY. } No. 801.

a In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Plaintiff,
vs.
AMERICAN ICE COMPANY *et al.*, Defendants. } Equity. No. 17259.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Original Bill to Foreclose a Mortgage, for an Accounting, &c.*

Filed March 25, 1896.

In the Supreme Court of the District of Columbia

EASTERN TRUST AND BANKING COMPANY, a Corporation, Plaintiff,
vs.
AMERICAN ICE COMPANY, a Corporation; Wm. G. Johnson, Assignee; Edward M. Willis, Corcoran Fire Insurance Company of the District of Columbia, a Corporation; Lincoln Fire Insurance Company of the District of Columbia, a Corporation; Riggs Fire Insurance Company, a Corporation, Defendants. } In Equity. No. 17259, Doc. No. 40.

To the supreme court of the District of Columbia, sitting as a court of equity:

The bill of complaint of the above-named plaintiff respectfully shows:

First. That it is a body corporate, duly organized under and by virtue of a special charter granted by the State of Maine, and engaged in carrying on a general trust and banking business, and has its principal office in the city of Bangor, in said State, and brings this suit as trustee under a certain mortgage or deed of trust hereinafter more particularly described; that the defendant American Ice Company is a body corporate, duly organized under the laws of the State of Maine for the purpose of dealing in ice, and had until the 14th day of October, 1893, its principal office or place of business in said city of Bangor, in said State, but since said date has had no office or place of business; that the said company is sued in its own right; that the
and defendant William G. Johnson is a citizen of the United
2 States, a resident of the District of Columbia, and is sued as the assignee of said American Ice Company under a certain deed of assignment hereinafter more particularly referred to; that the defendant Edward M. Willis is also a citizen of the United States, a resident of the District of Columbia, and is sued in his own right as the tenant in possession of the hereinafter-described real estate; that the defendants Corcoran Fire Insurance Company of the District of Columbia, Lincoln Fire Insurance Company of the District of Columbia, and Riggs Fire Insurance Company are all bodies corporate organized under the laws of the United States relating to the District of Columbia, having their respective offices in said District, and engaged in business as underwriters of insurance against loss or damage by fire on properties situate and located in said District, and are sued in their own rights respectively.

Second. That heretofore, to wit, on the second day of December, 1889, the said American Ice Company executed and delivered to the plaintiff company a certain deed of trust in the nature of a mortgage, hereinafter referred to as "said mortgage," and, after reciting a vote of the members of said American Ice Company and an issue pursuant thereto of the coupon notes or bonds of said company to the amount of $40,000, payable to said Eastern Trust and Banking Company or the bearer, in instalments of five thousand dollars (5,000) each, in three, four, five, six, seven, eight, nine, and
ten years from December 1st, 1889, respectively, with six per
3 cent. interest, payable semi-annually, thereby conveyed to the plaintiff company all of the real estate, wharves, ice-houses, boarding-house, stables, boiler, elevator, and machinery situate in the town of Hampden, in the county of Penobscot, State of Maine, and in the city of Washington, in the District of Columbia, the description of such part of said real estate as was and is located in the city of Washington being as follows:

All that piece or parcel of land, with the improvements thereon, lying in the city of Washington, in the District of Columbia, and being opposite square two hundred and seventy (270), in said city and District, commencing for the same at the southeast corner of square numbered two hundred and seventy, running thence southerly with the west line of Thirteenth street to the channel of the Potomac river; thence westerly with said channel to a point oppo-

site the southwest corner of said square numbered two hundred and seventy; thence due north to the said southwest corner of said square two hundred and seventy, following the eastern line of what is alleged to be Thirteen-and-a-half street; thence with the southern line of said square two hundred and seventy two hundred and fifty-five (255) feet one (1) inch to the place of beginning, together with all improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim and demand, either at law or in equity or otherwise however, of the said parties of the first part of, in, to, or out of the said piece or parcel
of ground and premises, being the same premises conveyed
4 by E. M. Willis and another to said American Ice Company by indenture dated December second, 1889, and recorded in the land records of the District of Columbia, Book 1445, page 16, together with all the rights and easements, appurtenant-, privileges, or options in the matter of wharving or other riparian rights of any kind whatsoever which may hereafter be acquired by said American Ice Company by virtue of the covenants and agreements in said deed of Willis and another contained, "for the purpose of securing the payment of said coupon notes or, more properly, bonds and interest, and to that end in and by said mortgage covenanted and agreed with the plaintiff company, trustee, that if the said American Ice Company should pay the principal and interest of said bonds according to their tenor and all the coupons attached to said bonds according to their tenor, etc., that the said mortgage should be void, but that if default should be made in the payment of any of said bonds at maturity or of any coupons, etc., and such default should continue for ninety days, then the whole amount of the principal of said bonds and all accrued and unpaid interest thereon (unless such default be waived by the holders of the majority of the bonds then outstanding) shall be deemed immediately due and payable, and it shall be lawful for the trustee (the plaintiff herein) to enter upon said premises and property and take possession thereof and proceed to make sale thereof for the payment of said outstanding bonds and interest and convey to the purchaser, and that said power of sale (the terms whereof are fully set forth in
said mortgage) should be cumulative, with the ordinary
5 remedy of foreclosure by entry or suit therefor; and the said company also covenanted and agreed with said trustee to keep said premises at all times properly insured against loss by fire in such companies as may be approved by the trustee, in such amounts as shall reasonably protect all the insurable property embraced in the terms of the grant, payable in case of loss to the trustee, as its interest may appear;" all of which recital, conveyance, covenants, and provisions will at large appear by reference to the record of said mortgage in Liber No. 1439, folio 417, of the land records of the District of Columbia, which plaintiff prays leave to produce and read at the hearing as a part hereof, said mortgage

having been duly made of record both in said District and in said county of Penobscot, State of Maine.

Third. The bonds described in said mortgage were executed and delivered unto the plaintiff company, as recited therein, and were by said company delivered to the parties entitled thereto, as required by the terms and provisions of its trust; that said bonds were taken by the parties to whom they were delivered for value and in the regular course of business, before maturity, and are now held and owned by them or by their assigns or legal representatives, except as to the first instalment thereof, which fell due in December, 1892, and was paid, together with the interest then accrued and due on all of said bonds. The next instalment of said bonded indebtedness, which became due in December, 1893, was not paid at maturity, nor was the interest then falling due paid, nor have either of said sums or any part of them been since paid or satisfied in any manner whatsoever (except so far as the net proceeds realized from
6 the sale of the Maine property hereinafter mentioned extend).

By the terms and provisions of said bonds and mortgage the residue of said bonded indebtedness, to wit, the sum of $35,000 (less the net proceeds of said sale), together with the accrued interest thereon, are and ever since said default have been due and payable and none of the parties holding said bonds have ever waived said default.

Fourth. That after said default, to wit, on or about October 13th, 1893, the said American Ice Company, by an instrumnnt of writing of that date, made and delivered in due form of law an assignment of all its property of what kind soever for the benefit of its creditors unto the defendant William G. Johnson, which said deed of assignment was duly made of record in Liber No. 1847, folio 211 *et seq.*, one of the land records of said District, and it is prayed that said record may be considered as a part of this bill of complaint, and that the plaintiff may have leave to produce and read the same at the final or any other hearing herein accordingly; that said Johnson accepted said trust and entered upon the discharge thereof, in the course of which he, as such assignee, leased the hereinbefore-described property of the American Ice Company, situate in the city of Washington, unto the defendant Edward M. Willis by a written agreement dated January 29th, 1894, for the term of one year from said date, at the monthly rental of one hundred and thirty dollars, and the said Willis took possession under said lease, and the said Johnson is still the assignee of said American Ice Company, acting as such.

7 Fifth. After the default in the payment of said second instalment of bonds and of the interest on the bonded indebtedness as aforesaid had continued for the period of more than ninety days the said bondholders, or those holding more than fifty per centum of the total face value thereof, directed the plaintiff company, as trustee, to proceed in the execution of said trust in accordance with the terms and provisions thereof. In pursuance of such direction and in strict conformity with the terms of the power of sale contained in said mortgage, said trustee advertised for sale and

sold the property in said mortgage embraced and described at public auction at Bangor, Maine, on September 8th, 1894, to a committee acting for said bondholders, as follows: The portion of said real estate and personal property and property rights situate in the State of Maine, for the sum of fourteen thousand dollars, and the portion of said property situate and located in the District of Columbia and city of Washington, with all the rights, etc., thereunto appertaining, for the sum of fourteen thousand seven hundred and fifty dollars; in all, twenty-eight thousand seven hundred and fifty ($28,750.00) dollars; which prices plaintiff is advised and believes, and hence avers, were the best obtainable prices therefor; and, further, that said sale was in all respects fairly conducted; that the said committee have never perfected their purchase of the said Maine property and no deed has passed to them thereunder, but that they tender themselves ready and plaintiff is ready on its part to comply with the terms of said sale, and that the same is in effect completed, and that there will be realized therefrom, after deducting the trustee's commission and certain necessary dis-
8 bursements and expenses and the reasonable costs and expenses of said sale in conformity with the provisions of said trust, the sum of nine thousand one hundred seventy-three dollars and sixty-eight cents ($9,173.68) to be credited upon the residue unpaid of said bonded indebtedness and interest; that at the time of said sale said Edward M. Willis, as tenant under said lease from Johnson, assignee, was still in actual possession of the Washington property, and said sale as to said Washington property was made upon the condition and with the understanding between the purchasers and the trustee that the trustee should obtain for them possession of the property before the sale should be closed or considered complete. The plaintiff company accordingly, acting under the right of entry by said deed conferred, caused thirty days' notices to quit said premises, in the usual form, to be served upon both Johnson, assignee, and said Willis, to wit, on July 30, 1894, and upon the expiration of said notice caused a seven days' summons, under the provisions of the statute in such case made and provided, to be issued by Lewis I. O'Neal, a justice of the peace in and for said District, and the said two defendants appeared therein and interposed pleas of title, defendant Johnson pleading title in himself and the defendant Willis in the said Johnson; whereupon security was given as required by law, and the causes were duly certified by the justice to this court, holding a special term as a circuit court of law, for trial, and thereafter such proceedings were had that said causes were tried by a justice of this court upon an agreed statement of fact, and judgment by him rendered for the defendants, from which the plaintiff company prosecuted an appeal to the Court of Appeals of the District of Columbia; — court
9 afterwards, to wit, on the third day of June, 1895, reversed the said judgment and remanded said causes for entry of judgment by the lower court in favor of the plaintiff company, trustee; all of which will appear by reference to the record in said causes, being causes numbered 36903 and 36904 at law, consolidated,

on the docket of the lower court, and No. 425, January term, 1895, on the docket of the Court of Appeals. Plaintiff files herewith, for the purpose of convenient reference, a copy of the printed "Transcript of the Record" filed in said causes in the Court of Appeals, which is marked "Plaintiff's Exhibit A" and is prayed to be read and referred to, so far as material, a- a part hereof. The charter of the plaintiff company is copied in said transcript at pages 8, 9, and 10; the above-mentioned mortgage is copied in said transcript at pages 11 to 19, and the aforesaid lease from Johnson, assignee, to Willis is copied in said transcript at pages 19, 20, and 21, and said copies are correct and true copies and are referres to in connection herewith as a part hereof, so far as the same may be deemed material.

That the defendants Johnson, assignee, and Willis, within the time limited by law, sued out a writ of error from the Supreme Court of the United States to said Court of Appeals and gave a bond to supersede (which did legally supersede) the execution of said judgment for possession, and said causes are now pending before the said Supreme Court of the United States on said writ of error, and plaintiff is without power to further proceed at law to take
10 possession of said land and premises pending the final hearing in said court of last resort; which hearing plaintiff is advised and believes, and hence avers, cannot take place before about eighteen months from this present time; that plaintiff's counsel made an effort to expedite the disposition of said causes by moving to dismiss said writ of error for want of jurisdiction or to affirm said decision of the Court of Appeals, but said motion to dismiss was overruled, and said motion to affirm was deferred for consideration until the said causes should be reached for final hearing in regular course, as aforesaid.

Sixth. That owing to the failure of the plaintiff to obtain possession of said real estate and premises in accordance with the understanding and condition aforesaid the said committee representing said bondholders have receded from their said purchase of the Washington property and declared that they will not complete the same, but that the said sale is at an end and a nullity, and your complainant is without authority, right, or power to enforce a compliance with said sale, and hence avers that the same is now a nullity.

Seventh. That said Willis has ever since continued in possession of said property and is now in possession, and said Johnson has continued in the collection of rent under the terms of said lease, and plaintiff is advised and believes and avers that it is entitled and it is its duty as such trustee as aforesaid to demand an accounting from said Johnson for said rents from the time of the service of said thirty days' notice to quit on him, to wit, July 30, 1894, and that the same be applied on account of the indebtedness
11 secured by said deed or mortgage, and that this court, as a court of equity, will require such accounting to be rendered and made.

Eighth. Plaintiff shows further that said Johnson, as such as-

signee, acting for and in place of said American Ice Company, procured heretofore the writing of certain policies of insurance against loss or damage by fire on part of the improvements on said real estate, to wit, the frame ice-house then and at the time of the making of said deed or mortgage situate on a part of said land and premises, as follows—that is to say: In and by the defendant The Corcoran Fire Insurance Company of the District of Columbia, a policy of insurance in the usual form in the sum of one thousand dollars ($1,000); in and by the defendant The Lincoln Fire Insurance Company of the District of Columbia, a policy of insurance in the usual form in the further sum of one thousand dollars ($1,000), and in and by the Riggs Fire Insurance Company, a policy of insurance in the usual form in and for the further sum of one thousand dollars ($1,000); in all, three thousand dollars ($3,000), the said Johnson, as such assignee, as aforesaid, being the assured in each of said policies, and the premiums therefor having been paid him out of the assets of the said American Ice Company.

Ninth. That said policies of insurance were in full force and virtue on the 11th day of February, A. D. 1896, and that on said day said ice-house was totally destroyed by accidental fire, and that damage thereby resulted to a much greater amount than the combined amount of said policies, and that therefore there
12 accrued to the said Johnson, as such assignee, the assured, a claim for the sum of one thousand dollars against each of said companies, subject to the prerequisites of their respective policies as to proof of loss and elapsing of time before payment should be demandable, etc.; that said companies, through their proper officers, have, as plaintiff is advised and believes, and hence avers, waived their right to insist on the expiration of the said time limits, proof of loss, etc., and admit their present liability in the full amount of their respective policies; that plaintiff is advised and believes, and hence avers, that it is entitled to the proceeds of said policies, as trustee, by force of the insurance clause of said deed or mortgage above mentioned and which is in language following, viz:

"(Article 7.) The American Ice Company hereby expressly covenants and agrees * * * to keep said premises and property at all times insured in such insurance companies as may be approved by the trustee, in such amounts as shall reasonably protect all the insurable property, payable in case of loss to the trustee, as its interest may appear. In case of loss the insurance money may be applied by the trustee toward the renewal of or additions to the property destroyed or injured, or, at the option of the trustee, the money may either be retained and invested in such se- as it approves as a sinking fund for the redemption of the bonds when due or be applied to the payment of the principal of such of the aforesaid bonds as may be at the time due and unpaid and of the interest which may at that time have accrued upon the
13 principal and be unpaid, without discrimination or preference, and ratably to the aggregate amount of said unpaid principal and accrued and unpaid interest, rendering the surplus,

if any, to the American Ice Company or to whomever may be lawfully and equitably entitled to receive the same;" but that said Johnson, as such assignee, denies the right of the plaintiff company to receive and apply any part of said sum under the provision of said mortgage, but declares his intention of collecting said sums from said companies and applying the same to the payment of the claims of the general creditors under said assignment.

Plaintiff is advised and believes, and hence avers, that, by reason of said covenant to insure above quoted, the said insurance against fire effected by said Johnson, as trustee, must be deemed and held as between the plaintiff, as trustee, and the said Johnson, assured, as made for the benefit of the parties secured under said mortgage and pursuant to said covenant of the American Ice Company so to insure for their benefit, and that the plaintiff has accordingly a right or claim to said proceeds which a court of equity will recognize and enforce as a lien thereon, and that if the said company pay the same or any part thereof into court that the court will direct that the same be turned over to plaintiff, as trustee, to deal with the same in accordance with the provisions of its trust, and that if the said companies or any of them should pay said sums or any part thereof to the said assured that the court will, if necessary, enjoin him from carrying out his declared intention of distributing the said proceeds to or among the general creditors of said
14 ice company and require him to pay over or account for the same to the plaintiff, as trustee, and that if for any reason any of said companies should decline or neglect to pay said money into court or to said assured that the court will direct said Johnson, the assured, to take such action as may be necessary to collect said sums and to pay the same into court or to plaintiff, as trustee.

Tenth. Plaintiff shows further that not only has the said American Ice Company, the grantor in said deed or mortgage, become insolvent (as appears from its said assignment), but the value of the property of said company conveyed by said deed or mortgage has greatly depreciated in value, and the portion remaining unsold, to wit, that situate and located in the city of Washington, is inadequate in value to secure the unpaid portion of said bonded indebtedness and interest intended to be secured thereby, and, if offered for sale, would, as plaintiff is advised and believes, *at best* sell for an amount much less than the said unpaid portion of indebtedness; that the principal reason for this depreciation in value is that the real estate of said American Ice Company opposite square 270 above described is included in the claim of the United States Government in what is known as the Potomac Flats cases, in which cases said claim of title on the part of the Government has recently been sustained by the supreme court of the District of Columbia, and an appeal has been taken on behalf of the parties in possession to the Supreme Court of the United States, where the
15 same is now pending; that at the time said mortgage was executed said decision by the supreme court of the District of Columbia had not been made, and that the effect thereof has been to greatly diminish, if not to destroy, the markerable value of

the property affected and, if said decision is affirmed by the Supreme Court of the United States, will render parties in possession liable to eviction by the United States; that the property of the company in Maine, sold as aforesaid under said mortgage, had also at the time of this sale become and still is greatly less in marketable value than at the time of the execution of said mortgage, owing largely to the competition of companies manufacturing ice by artificial processes and the lessening demand for natural ice because of the recent perfection and increase of cold-storage plants in the principal cities, and that the same causes operate to depreciate the value of the Washington property.

Eleventh. Plaintiff is advised and avers that it would be greatly for the benefit of the beneficiaries or parties secured by said mortgage that receivers be appointed to take possession of the property of the American Ice Company in this jurisdiction and to manage the same and apply the rents, income, and profits thereof, under the direction of the court, and for the better security of said beneficiaries; and plaintiff is advised and avers that sufficient reasons exist and have been set forth to justify the court in appointing such receivers herein.

Twelfth. Plaintiff shows further that it is directed by a ma-
16 jority of the beneficiaries aforesaid to proceed to foreclose said mortgage, in order that such of the real and personal property and property rights of said company conveyed by said mortgage which are located or situate within this jurisdiction be sold before they further depreciate in value or be, as to the personality, injured, removed, or destroyed.

The premises considered, plaintiff company, trustee, being without remedy at law, brings this suit in equity, where matters of the sort are properly cognizable, and prays as follows:

Prayers.

1. That the United States writ of subpœna may issue, addressed to the defendants, commanding them to appear and true answer make to the exigencies of this bill.

2. That a receiver or receivers may be appointed to take possession of the property of the American Ice Company described in the mortgage above referred to, and which is situate or located in the city of Washington, and manage the same, and the rents, income, and profits thereof to apply under the directions of the court pending this suit.

3. That said defendant Johnson, as assignee of said American Ice Company, may be required to state and render an account to and with the plaintiff for all rents collected (and other income and profit, if any, derived by him from the real estate hereinbe-
17 fore described) from the date of the serving of the notice to quit on him above mentioned, to wit, July 30, 1894, to the time of such accounting, and that the plaintiff may be adjudged as trustee, as aforesaid, to be entitled to such moneys as may appear by said accounting to have been received and collected by the said

Johnson, as aforesaid, and that the said Johnson may be required to pay over the same to it accordingly.

4. That said defendants, The Corcoran Fire Insurance Company of the District of Columbia, The Lincoln Fire Insurance Company of the District of Columbia, and The Riggs Fire Insurance Company, may be allowed or ordered and directed by the court to pay the amounts of their respective policies of insurance above referred to into the registry of the court, there to abide the issue of this suit, and to be then paid to the plaintiff as trustee if its aforesaid claim thereto shall be established.

5. That if the court shall not deem it proper to grant the above prayer, or if for any other reason said insurance money or any part thereof should be paid to said Johnson, the assured, instead of into court, that the court will direct said Johnson to pay the said insurance money or such part as may be or may have been received by him into the registry of the court, to the end and for the purposes aforesaid.

6. That the plaintiff as trustee may be declared entitled to a lien upon the proceeds which are or may become payable to said Johnson, assignee, under and by virtue of said policies of insurance.

18 7. That the plaintiff company, as trustee, may be permitted and authorized to proceed in the further execution of its trust by making sale, under the supervision of the court, of the property of the American Ice Company aforesaid, the said plaintiff, as such trustee, to report said sale to the court and apply the proceeds thereof under its direction, or if the court shall deem it inadvisable that the plaintiff should conduct such sale, that then and in that event the court pass a decree for the sale of the aforesaid property for the satisfaction of the claims of the beneficiaries under said mortgage (so far forth as the proceeds of such sale will extend) and appointing a competent trustee or trustees to make such sale.

8. That plaintiff may have such other and further relief in the premises as the nature of the case may require.

The defendants to this suit are American Ice Company, a corporation; William G. Johnson, assignee; Edward M. Willis, Corcoran Fire Insurance Company of the District of Columbia, a corporation; Lincoln Fire Insurance Company of the District of Columbia, a corporation, and Riggs Fire Insurance Company, a corporation.

EASTERN TRUST AND BANKING COMPANY,
By GEO. B. CANNEY, *Secretary.*

B. F. LEIGHTON,
GEO. FRANCIS WILLIAMS,
Solicitors for Plaintiff.

[SEAL.]

19–21 COUNTY OF PENOBSCOT, *State of Maine,* } *To wit:*

I, George B. Canney, being first duly sworn, on oath say that I am the secretary of The Eastern Trust and Banking Company, plaintiff in the annexed bill of complaint; that I have read the said bill by it subscribed by me as secretary and know the contents thereof; that the facts therein stated as *knowledge* are true; that those stated upon information and belief I believe to be true.

GEO. B. CANNEY.

Subscribed and sworn to before me this 23d day of March, A. D. 1896.

DANIEL F. DAVIS,
Notary Public.

[SEAL.]

22 COMPLAINANT'S EX. "A."

In the Court of Appeals of the District of Columbia.

THE "EASTERN TRUST AND BANKING COMPANY," Appellant, *vs.* EDWARD M. WILLS and WILLIAM G. JOHNSON, Assignee. } No. 425.

Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING CO., Plaintiff, *vs.* EDWARD M. WILLIS, Defendant. } At Law. No. 36903.

EASTERN TRUST AND BANKING CO., Plaintiff, *vs.* WM. G. JOHNSON, Defendant. } At Law. No. 36904.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled causes, to wit:

Judgment.

Filed September 29, 1894.

Complaint of Landlord Against Tenant.

36903.

To Lewis I. O'Neal, justice of the peace for the District of Columbia:

Your complainant, Eastern Trust and Banking Company, a corporation duly established under a charter granted by the State of

Maine, respectfully represents that it is entitled to the possession of the lands, tenements, and premises lying opposite to square two hundred and seventy (270), in the city of Washington, in the District of Columbia, described by metes and bounds as follows, to wit: Commencing for the same at the southeast corner of said square two hundred and seventy (270), thence southerly with the west line of Thirteenth street to the channel of the Potomac river; thence
23 westerly with the said channel to a point opposite the southwest corner of said square; thence due north to the southwest corner of said square, following the eastern line of what is alleged to be Thirteen-and-a-half street; thence with the southern line of said square two hundred and fifty-five (255) feet and one (1) inch to the place of beginning, together with the improvements thereon and the rights and privileges thereto appertaining, and that the same are detained from it and held without right by one Edward M. Willis, of the District of Columbia, who became and was tenant by sufferance of the undersigned of said lands, tenements, and premises, and whose said tenancy and estate therein has been determined by the service of a thirty days' notice to quit on said Willis. Complainant therefore prays that a summons may be issued to a proper officer of said District, to be served upon said tenant by sufferance, holding over as aforesaid, commanding said tenant to appear before you on a day to be therein named, to show cause why judgment in favor of your complainant for the possession of said lands, tenements, and premises and costs accruing upon this application should not be rendered herein, agreeably to the act of Congress in such cases made and provided.

EASTERN TRUST AND BANKING COMPANY, *Complainant*,
By BENJAMIN F. LEIGHTON, *Its Attorney*.

Subscribed and sworn to before me this 17th day of September, A. D. 1894, by said Benjamin F. Leighton, as attorney for said corporation, complainant.

LEWIS I. O'NEAL, *J. P.* [SEAL.]

Plea of Title.

Filed September 29, 1894.

DISTRICT OF COLUMBIA, *County of Washington*, } *To wit:*

Before Lewis I. O'Neal, a justice of the peace in and for the District of Columbia, this 27th day of September, A. D. 1894.

EASTERN TRUST & BANKING CO., Plaintiff,
vs.
EDWARD M. WILLIS, Defendant. } No. 15280, 36903.

Plea.

Now comes the defendant in his proper person and, denying that he held the premises as in the written complaint of plaintiff alleged,

says that the title to the said premises is in Wm. G. Johnson, under whom defendant claims the said premises, and that the said title hereby claimed is not derived from any letting of the premises by the plaintiff (or by those under whom the plaintiff claims), and is not derived from any forcible entry or forcible detainer.

EDWARD M. WILLIS, *Defendant.*

24 Subscribed and sworn to before me this 27th day of September, A. D. 1894.

LEWIS I. O'NEAL, *J. P.* [SEAL.]

NOTE.—If the title is in the defendant, he will so state. If it be in another, under whom the defendant claims, he must name that other and say "that the title is in —— ——, under whom he claims the said premises."

Rule Supreme Court District of Columbia Prescribing Above Form of Plea. 2d M. G. T., p. 559.

RULE.—"In any and every proceeding instituted before a justice of the peace under and by virtue of section 684, chapter XIX, of the Revised Statutes of the United States relating to the District of Columbia, if upon the trial the defendant, in order to avail himself of the provisions of section 687 of the said Revised Statutes, wishes to plead title to the premises in himself or in another person under whom he claims the premises, the justice of the peace shall require the plea to be in writing and to be sworn to by the defendant. The plea shall be in the following (as given above) or equivalent form."

Any plea of the title not made as above required the justice shall treat as a nullity. Unless the plea of title be made as by this rule required, the proceedings before the justice shall not be suspended, but the justice shall go on with the trial and render judgment in the matter as the right of the case may require. Upon a plea of title being made by the defendant in conformity with this rule and upon the proceedings being certified to this court by the justice, the cause shall be docketed by the clerk and placed on the trial calendar in the same manner and subject to the same rules as appeals from a justice of the peace. The plaintiff shall, during the term of the circuit court occur-ing next after the pleading of title before the justice, file in said court a declaration making demand for the possession of the premises, and with a description thereof as in ejectment, and serve the defendant with a copy thereof. In any such declaration a general demand shall be sufficient to warrant an assessment of damages and intervening rent, as provided in section 690 of said Revised Statutes.

Declaration in Plea of Title.

Filed October 5, 1894.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Plaintiff,
vs.
EDWARD M. WILLIS, Defendant.
} At Law. No. 36903.

The plaintiff sues the defendant to recover the following-described property, situated in the District of Columbia, to wit: All those certain lands, tenement-, and premises lying opposite to square number two hundred and seventy (270), in the city of Washington, in the District of Columbia, described by metes and bounds as follows, to wit: Commencing for the same at the southeast corner of said square two hundred and seventy, thence southerly with the west line of Thirteenth street to the channel of the Potomac river; thence westerly with the said channel to a point opposite the southwest corner of said square; thence due north to the southwest corner of said square, following the eastern line of what is alleged to be Thirteen-and-a-half street; thence with the southern line of said square two hundred and fifty-five (255) feet and one (1) inch to the place of beginning, together with the improvements thereon and the rights and privileges thereto appertaining, in which plaintiff claims a fee-simple, and of which the plaintiff was lawfully possessed on the first day of January, 1894, when the defendant entered the same and unlawfully ejected the plaintiff therefrom and unlawfully detains the same from the plaintiff; and the plaintiff made due demand upon the defendant for the possession of said real estate and premises and does hereby renew such demand, which the defendant refused and still refuses to give, and the plaintiff claims the possession thereof, with the appurtenances, besides the cost of this suit.

B. F. LEIGHTON,
Attorney for Plaintiff.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Plaintiff,
vs.
EDWARD M. WILLIS, Defendant.
} At Law. No.—.

Service of a copy of the above declaration is this 5th day of October, 1894, acknowledged.

CALDERON CARLISLE,
Attorney for Defendant.

Statement of Fact, etc.

Filed November 17, 1894.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY
vs.
EDWARD M. WILLIS. } At Law. No. 36903.

SAME
vs.
WILLIAM G. JOHNSON. } At Law. No. 36904.

The plaintiff and defendants in the above-entitled causes hereby mutually agree that the said causes may be tried together, and that the material facts in the said causes are as follows, to wit:

26 The plaintiff is a body corporate, organized and doing business under and by virtue of a special charter granted by the legislature of the State of Maine, and having its principal place of business in the city of Bangor, in said State.

An exemplified copy of said charter is filed herewith, marked "E. T. and B. Co., Exhibit No. 1," and is to be read and considered in connection herewith and as part hereof. The defendant William G. Johnson is sued as assignee of the American Ice Company, as hereinafter set out, and the defendant Edward M. Willis as the tenant or lessee of the said Johnson. The American Ice Company is a body corporate duly organized under the laws of the State of Maine and had, until the 14th day of October, 1893, its principal place of business at the said city of Bangor, in said State, since which time it has had no office.

That heretofore, to wit, on the second day of December, A. D. 1889, the said American Ice Company executed and delivered to the said trust company a certain deed, which was recorded in Liber No. 1439, folio 417 *et seq.*, one of the land records of said District, and a regularly certified copy of said deed as recorded is filed with this statement of fact, marked "E. T. and B. Co., Exhibit No. 2," and is made a part hereof as fully as though incorporated herein *in hæc verba*. The original deed bears the impress of the corporate seal of the American Ice Company and of the Eastern Trust and Banking Company upon or near the names of said companies subscribed to said deed, and it is admitted that said seals were affixed to said deed at the time of or before the execution and delivery thereof and as required by the witnessing clause thereto, and that the recorder failed to note the same upon the record.

The bonds described in said deed were executed and delivered unto the said Eastern Trust and Banking Company, as recited in said deed, and were by the said Eastern Trust and Banking Company delivered to the parties entitled thereto, as required by the terms and provisions of said deed. That said bonds were taken by the parties to whom they were delivered for value in the regular

course of business, before maturity, and are now held and owned by them or by their assigns or legal representatives, except as to the first instalment thereof, which fell due in December, A. D. 1892, and was paid, together with the interest then accrued and due on all of said bonds. The next -stalment of said bonded indebtedness, which became due in December, 1893, was not paid at maturity nor was the interest then falling due paid, nor have either of said sums or any part of them been since paid or satisfied in any manner. The parties holding said bonds have not nor have any of them waived their right to said payment in accordance with the tenor and effect of said bonds and of said deed of trust or mortgage. By the terms and provisions of said bonds and of the said deed of trust or mortgage the residue of said bonded indebtedness, to wit, the sum of $35,000, together with the accrued interest thereon, are now and were at the time of the commencement of this suit due and payable.

27 Thereafter, to wit, on or about the 13th day of October, A. D. 1893, the said American Ice Company, by an instrument of writing of that date, made and delivered in due form of law an assignment of all of its property of what kind soever for the benefit of its creditors unto the defendant William G. Johnson, which said deed of assignment was duly made of record in Book No. 1847, page 211 *et seq.*, one of the land records of said District, a duly certified copy of which is filed with this statement of fact, marked "E. T. and B. Co., Exhibit No. 3," and is to be read and considered in connection herewith and as part hereof so far as it may be material.

The said Johnson accepted said trust and entered upon the discharge thereof, in the course of which he, as such assignee, leased the hereinbefore-described real estate unto the defendant, Edward M. Willis. A copy of said lease is filed herewith, marked "E. T. and B. Co., Exhibit No. 4," and is to be read and considered in connection herewith and as part hereof.

After the default in the payment of said second instalment of bonds and of the interest on the bonded indebtedness, as aforesaid, had continued for the period of more than ninety days the said bondholders, or those holding more than fifty per cent. of the total face value thereof, directed the said trustee to proceed in the execution of said trust in accordance with the terms and provisions thereof, in pursuance of which the said trustee has instituted these proceedings to obtain possession of said property.

The said trustee caused a thirty days' notice to quit to be served upon each of said defendants. The notice to William G. Johnson was in the language following, to wit:

"SIR: You are hereby notified to remove from and quit the land and premises situate in the city of Washington, in the District of Columbia, described as follows, viz: All that piece or parcel of land opposite square two hundred and seventy (270), commencing for the same at the southeast corner of said square two hundred and seventy (270), thence southerly with the west line of Thirteenth

street to the channel of the Potomac river; thence westerly with the said channel to a point opposite the southwest corner of said square; thence due north to the southwest corner of said square, following the eastern line of what is alleged to be Thirteen-and-a-half street; thence with the southern line of said square two hundred and fifty-five (255) feet one (1) inch to the place of beginning, together with the improvements thereon and the rights and privileges thereunto appertaining, which you now occupy as tenant by sufferance of the undersigned, in your capacity as assignee as aforesaid, at the end of thirty (30) days from the time of the serving of this notice upon you.

(Signed) EASTERN TRUST AND BANKING COMPANY,
A Corporation Duly Established under a Charter Granted by the State of Maine,
By B. F. LEIGHTON, *Its Attorney.*"

28 The notice addressed to Edward M. Willis is the same in every particular, except that the words "in your capacity as assignee as aforesaid" are omitted.

Copies of said notices are filed herewith, marked "E. T. and B. Co., Exhibits Nos. 5 and 6," and the same are to be read and considered as a part hereof. The said notices were duly served upon the defendants on the 30th day of July, A. D. 1894. Thereafter, to wit, on the 17th day of September, 1894, the plaintiffs caused a seven days' summons to be issued by Lewis I. O'Neal, a justice of the peace in and for said District, in accordance with the provisions of the statute in such cases made and provided; and the defendants appeared therein and interposed pleas of title, the defendant Johnson pleading title in himself and the defendant Willis in the said Johnson, whereupon security was given as required by law and the causes were duly certified by the justice to this court for trial, as will appear by the pleadings and proceedings had and taken in said causes.

It is further admitted that after default had been made in the payment of said bonds and the interest thereon, as hereinafter stated, and in pursuance of the direction of the holders of said bonds as aforesaid and of the powers conferred upon and vested in it by said deed of trust or mortgage, the said trustee advertised said property for sale in accordance with the requirements of said deed of trust and exposed the same for sale at public auction in the said city of Bangor, State of Maine, on or about the 4th day of May, A. D. 1894. No sale took place at that time, but the sale was adjourned until September 8th, A. D. 1894, at the same place, at which sale a committee, acting for said bondholders, purchased the above-described real estate for their, the said bondholders', benefit.

The terms of said sale have not yet been complied with and no deed has been made to said purchasers, it being understood and agreed upon between the purchaser and the trustee at the time of said last-named sale that the said trustee should first obtain possession of said property.

Upon the pleadings and proceedings in said causes and the facts hereinbefore stated and admitted, it is by the respective parties to said causes stipulated and agreed that the same shall be, and they hereby are, submitted to the honorable justice holding this court for his determination without a jury, judgment to be rendered by him as to law and justice shall appertain, the right of excepting to the materiality or relevancy or competency of the facts above stated or any of them being reserved, as also the right of appeal.

In witness whereof the said plaintiff and defendant- have, by their respective attorneys, signed this agreement.

B. F. LEIGHTON,
Attorney for Plaintiff.
W. G. JOHNSON,
Attorney for Defendants.

29 E. T. & B. Co., EXHIBIT No. 1.

Filed November 17, 1894.

STATE OF MAINE.

In the year of our Lord one thousand eight hundred and eighty-seven.

An act to incorporate the Eastern Trust and Banking Company.

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

SECTION 1. Weston F. Milliken, Thomas J. Stewart, Fred. W. Hill, John Cassidy, David Bugbee, Eugene M. Hersey, John H. Dole, Sprague Adams, James Adams, Josiah C. Towle, William B. Dole, J. Albert Dole, William B. Snow, Julius Waterman, Charles E. Field, Eugene C. Nichols, Frank P. Wood, Jacob Sterns, George H. Grant, Ivory W. Coombs, John Ross, John McCann, Cornelius Murphy, David T. Sanders and Francis H. Clergue, or such of them as may by vote accept this charter, with their associates, successors and assigns, are hereby made a body corporate and politic, to be known as Eastern Trust and Banking Company and as such shall be possessed of all the powers, privileges and immunities, and subject to all the duties and obligations conferred on corporations by law, except as otherwise provided herein.

SECTION 2. The corporation hereby created shall be located at Bangor, Penobscot county, Maine, and may establish agencies in any part of this State.

SECTION 3. The purposes of said corporation and the business which it may perform, are; first, to receive on deposit, money, coin, bank notes, evidences of debt, accounts of individuals, companies, corporations, municipalities and States, allowing interest thereon, if agreed, or as the by-laws of said corporation may provide; second to borrow money, to loan money on credits or real estate or personal security, and to negotiate loans and sales for others; to guarantee the payment of the principal and interest of all obli-

gations secured by mortgages of real estate running to said Eastern Trust and Banking Company; to issue its own bonds or obligations based upon real or personal property conveyed to it, in trust to secure the payment of such bonds or obligations and the interest thereon; third, to hold for safe keeping, all kinds of personal or mixed property, and to act as agent for the owners thereof, and of real estate for the collection of income on the same, and for sale of same, and to act as agent for issuing, registering and countersigning certificates, bonds, stocks and all evidences of debt or ownership in property; fourth, to hold by grant, assignment, transfer, devise or bequest, any real or personal property, or trusts duly created, and to execute trusts of every description; fifth, to act as assignee, receiver, guardian, executor and administrator, and no surety shall be necessary upon the bond of the corporation unless the court or officer approving such bond shall require it; sixth, to hold and enjoy all such estates, real, personal and mixed, as may be obtained by the investment of its capital stock or any other moneys and funds that may come into its possession in the course of its business and dealings, and the same sell, grant, mortgage and dispose of, except as provided in section ten; seventh, to do in general, all the business that may lawfully be done by a trust or banking company.

SECTION 4. An administrator, assignee, guardian or trustee, any court of law or equity, including courts of probate and insolvency, officers and treasurers of towns, cities, counties and savings banks of the State of Maine, may deposit any moneys, bonds, stocks, evidences of debt or of ownership in property, or any personal property, with said corporation, and any of said courts may direct any person deriving authority from them, to so deposit the same.

SECTION 5. The capital stock of said corporation shall be one hundred thousand dollars, divided into shares of one hundred dollars each, with the right to increase said capital at any time, by vote of the shareholders, to any amount not exceeding one million of dollars. Said corporation shall not commence business until stock to the amount of one hundred thousand dollars shall have been subscribed for and paid in.

SECTION 6. The shareholders of this corporation shall be individually responsible, equally and ratably, and not one for the other, for all contracts, debts and engagements of said corporation to a sum equal to the amount of the par value of the shares owned by each, in addition to the amount invested in said shares.

SECTION 7. Said corporation, after beginning to receive deposits, shall at all times have on hand in lawful money, as a reserve, not less than twenty-five per cent. of the aggregate amount of its deposits, which are subject to withdrawal on demand; provided, that in lieu of lawful money, two-thirds of said twenty-five per cent. may consist of balances payable on demand, due from any national or State bank.

SECTION 8. The shares of said corporation shall be subject to taxation in the same manner and amount, as are the shares of national banks.

SECTION 9. Said corporation shall be subject to examination by the bank examiner, who shall visit it at least once in every year, and as much oftener as he may deem expedient. At such visits, he shall have free access to its vaults, books and papers, and shall thoroughly inspect and examine all the affairs of said corporation, and make such inquiries as may be necessary to ascertain its condition and ability to fulfill all its engagements. He shall preserve, in a permanent form, a full record of his proceedings, including a statement of the condition of said corporation. A copy of such statement shall be published by said corporation immediately after the annual examination of the same, in some newspaper published in Bangor.

SECTION 10. All property or money held in trust by this
31 corporation shall constitute a special deposit, and the accounts thereof, and of said trust department, shall be kept separate, and such funds and the investment or loans of them shall be especially appropriated to the security and payment of such deposits, and not be subject to any other liabilities of the corporation; and for the purpose of securing the observance of this proviso, said corporation shall have a trust department in which all business pertaining to such trust property, shall be kept separate and distinct from its general business.

SECTION 11. All the corporate powers of this corporation shall be exercised by a board of trustees, whose number and term of office shall be determined by vote of the shareholders at the first meeting held by the incorporators and at each annual meeting thereafter. The affairs and powers of the corporation may, at the option of the shareholders, be entrusted to an executive board of five members, to be, by vote of the shareholders, elected from the full board of trustees. A majority of said board shall reside in this State.

SECTION 12. This act shall take effect when approved.

IN HOUSE OF REPRESENTATIVES, *March* 8, 1887.

This bill, having had three several readings, passed to be enacted.

A. P. WISWELL,
Speaker pro Tem.

IN SENATE, *March 9th*, 1887.

This bill, having had two several readings, passed to be enacted.

SEBASTIAN S. MARBLE, *President.*

MARCH 10TH, 1887.

Approved.

JOSEPH R. BODWELL, *Governor.*

STATE OF MAINE,
OFFICE OF SECRETARY OF STATE.

I hereby certify that the paper to which this is attached is a true copy from the records of this office.

[SEAL.] In testimony whereof I have caused the seal of the State to be hereunto affixed.

Given under my hand, at Augusta, this nineteenth day of October, in the year of our Lord one thousand eight hundred and ninety-four, and in the one hundred and eighteenth year of the Independence of the United States of America.

S. J. CHADBOURNE,
Deputy Secretary of State.

32 E. T. & B. Co., Exhibit No. 2.

Filed November 17, 1894. Rec'd Jan. 13, 1890—10.15 a. m.

American Ice Company
to
Eastern Trust & Banking Co., Tr. } Trust Mortgage.

Liber No. 1439, folio 417 *et seq.* F. J. J.

This indenture made the second day of December A. D. 1889 between American Ice Company a corporation duly organized under the laws of the State of Maine, and located at Bangor in the county of Penobscot and State aforesaid, party of the first part, and the Eastern Trust and Banking Company, trustee, a corporation duly established under a charter granted by the State aforesaid, and located at Bangor aforesaid, hereinafter called the trust company, party of the second part, witnesseth,

That whereas said American Ice Company, at a meeting of its directors duly called and held on the 18th day of November 1889, for the purpose as expressed in the call of providing for the issue of the first-mortgage bonds of the company to the amount and on the terms expressed in the vote copied below, the language of the proposed vote being embodied in the call, adopted the following vote: "That the president and secretary be authorized to make and execute a mortgage of all the property of the company including that to be purchased of E. M. Willis to any person or corporation as trustee to secure an issue of the coupon notes or bonds of the company to a total amount of forty thousand dollars ($40,000). Said notes or bonds and the interest thereon shall be of such denominations, and payable at such times and places and on such terms and conditions as the president and secretary may determine, the said officers are hereby authorized to do all things and execute all papers necessary for carrying out the purposes of this vote. And whereas in pursuance of said vote the American Ice Company acting by its president and secretary, has made its coupon notes or bonds numbered from one to one hundred and seventy-six inclusive, one hundred and twenty of the same being for one hundred dollars each, and fifty-six for the sum of five hundred dollars each, dated December 2nd, 1889, and payable in equal installments of five thousand dollars ($5,000) each in 3, 4, 5, 6, 7, 8, 9 and 10 years from the first day of December 1889, with interest at the rate of six (6) per cent. per annum payable semi-annually on the first days of June and December in each year at the office of said Eastern Trust and

Banking Company in said Bangor, according to the tenor of the coupons attached thereto, all of which bonds are now in the hands of the party of the second part to be authenticated by *b*a certificate signed by it as being secured by these presents and are held by it for delivery to the parties respectively entitled thereto, the form of each bond, of the coupons, and of the trustees' certificate thereon being substantially as follows, viz:

33 $—. UNITED STATES OF AMERICA. No. —.

American Ice Company First-mortgage 6 per Cent. Bond. Organized under the laws of Maine.

Authorized issue, $40,000.

American Ice Company organized under the laws of the State of Maine, and having places of business in the city of Bangor, in the county of Penobscot and State *b* of Maine, and the city of Wash-ington in the District of Columbia, promises to pay Eastern Trust and Banking Company or the bearer hereof the sum of — hundred dollars lawful money of the United States at the office of Eastern Trust and Banking Company in the city of Bangor, Maine, in — years from the first day of December, A. D. 1889, with interest on said sum at the rate of six (6) per cent. per annum, payable semi-annually on the first days of June and December in each year at the office of said Eastern Trust and Banking Company in said Bangor, according to the tenor of the coupons hereto attached upon the presentation and surrender of said coupons respectively. This bond is one of a series of one hundred and seventy-six bonds (176) fifty-six (56) of which are for five hundred dollars each and one hundred and twenty (120) for one hundred dollars each, amounting in the aggregate to forty thousand dollars, numbered respectively from one to one hundred and seventy-six both inclusive, all bearing even date herewith, executed and delivered in pursuance of a vote of the directors of said American Ice Company, duly authorized by the by-laws of said American Ice Company duly adopted on the eighteenth day of November, 1889, authorizing the issue of said bonds and the execution and delivery of the mortgage hereinafter mentioned. Payment of this bond and of the coupons attached is secured in the manner and upon the terms therein stated by a first mortgage upon all the real estate wharves, ice-houses, stables, boilers, elevator and machinery situated in the town of Hampden in the county of Penobscot and State of Maine, and in the city of Wash-ington, District of Columbia, bearing even date herewith, executed and delivered by it in pursuance of said vote to said Eastern Trust and Banking Company as trustee for the bondholders, which mort-gage has been duly recorded in the registry of deeds for Penobscot county, Maine, and in the registry of land records for District of Columbia. Said mortgage is hereby referred to and the terms thereof made a part of this bond. This bond shall pass by deliv-ery. In testimony whereof, said American Ice Company has caused

this bond to be signed and sealed in its name and behalf by its president and countersigned by its secretary, and the coupons hereto attached to be signed by its secretary the second day of December, A. D. 1889.

AMERICAN ICE COMPANY.
—— ——, *Secretary.*
—— ——, *President.*

34 On the back of the bond appears the following endorsement:

Trustee's Certificate.

The undersigned trustee, named in the within bond and in the mortgage therein referred to, certifies that said mortgage has been delivered to it as trustees and that this bond is one of the series of one hundred and seventy-six (176) bonds secured thereby.

EASTERN TRUST AND BANKING COMPANY,
By —— ——, *Trustee.*

No. —.

American Ice Company First-mortgage 6 % Bond.

Interest payable June 1st and December 1st at the office of Eastern Trust and Banking Company, Bangor, Maine.

All the coupons contain the following:

$—.

On the first day of ——, 18—, American Ice Company promises to pay the bearer — dollars on presentation of this coupon at the office of Eastern Trust and Banking Company, Bangor, Maine, being six months' interest on bond No. —.

Dated December 2nd, 1889.

CHAS. E. FIELD, *Secretary.*

Now then the party of the first part, in consideration of the premises and of the sum of one dollar paid by the party of the second part, receipt whereof is hereby acknowledged, and in order to secure due and punctual payment of said several bonds and of the interest thereon, has given, granted, bargained, sold, transferred and conveyed and does by these presents give, grant, bargain, sell, transfer and convey unto the party of the second part, trustee, as hereinafter provided and its successors in trust, with full power of succession to, and enjoyment of the franchises of the corporation, all its real estate, wharves, ice-houses, boarding-house, stables, boilers, elevator and machinery situated in the town of Hampden in said county of Penobscot and in the city of Washington in the District of Columbia, together with all and singular the privileges and appurtenances thereto belonging. It is understood that all the bonds authorized by the vote herein recited and secured by this instru-

ment shall be delivered to the Eastern Trust and Banking Company as trustee, and by it certified to be of the series secured hereby and that all said bond- shall then be returned to and be at the disposition of said American Ice Company. The description of the real estate and rights owned by the American Ice Company which are herein conveyed is as follows, viz: Two certain lots or parcels of land in Hampden in the county of Penobscot aforesaid bounded and described as follows: That portion of the Cyrus
35 Emery farm which lies between the Penobscot river and the New county road, being all of said farm lying east of said road, the same measuring nine hundred and sixty (960) feet more or less on said road, and containing thirty (30) acres more or less; and being the same premises conveyed by trustees by said Cyrus Emery's estate by said deed recorded in Penobscot Registry of Deeds vol. 502 page 288, to which deed as well as to a deed from Augustus J. Emery recorded in said Registry of Deeds vol. 530 page 98 reference is hereby had. A lot formerly a part of the homestead of John Harden described and bounded as follows, viz: Beginning at a stake, on the deviding line between land of said Harden and land formerly of the heirs of Cyrus Emery, thence at right angles with said dividing line twelve and one-half rods more or less to the dividing line between land of said Harden and land of Doddwell; thence on said dividing line to the Penobscot river; thence down said river to said dividing line between land of said Harden and land formerly of the heirs of Cyrus Emery; thence on said Emery's line to the place of beginning. Together with all the buildings and fixtures of the two said above-described parcels of land, being the same premises conveyed by the Penobscot River Ice Company to said American Ice Company by deed dated June 10th, 1889 and recorded in the Penobscot Registry of Deeds, Book 593, page 449. Also all that piece or parcel of land with the improvements thereon lying in the city of Washington, in the District of Columbia, and being opposite square 270 in said city and District, commencing for the same at the southeast corner of square numbered two hundred and seventy, running thence southerly with the west line of Thirteenth street to the channel of the Potomac river, thence westerly with the said channel to a point opposite the southwest corner of said square numbered two hundred and seventy, thence due north to the said southwest corner of said square two hundred and seventy, following the eastern line of what is alleged to be Thirteen-and-a-half street, thence with the southern line of said square two hundred and seventy, two hundred and fifty-five feet one inch to the place of beginning; together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand, either at law or in equity, or otherwise however, of the said parties of the first part of, in, to or out of the said piece or parcel of ground and premises. Being the same premises conveyed by E. M. Willis and another to said American Ice Company by indenture dated December second, 1889, and

recorded in land records of the District of Columbia Book 1445 page 16. Together with all the rights and easements, appurtenant-, privileges or options, in the matters of wharving or other riparian rights of any kind whatsoever which may hereafter be acquired by said American Ice Company by virtue of the covenants and agreements in said deed of said Willis & *al.* contained. To have and to hold the above-described property, real estate, rights, and
36 franchises with all the privileges and appurtenances thereto belonging unto the party of the second part, its successors and assigns, to its and their own use and behoof forever, but in trust nevertheless for the equal *pro rata* benefit and security of the holders of the above-mentioned bonds, at whatever period the same may be issued without any preference or priority of one bond over another and for the uses and purposes hereinafter declared.

Article 1. Until default shall be made in the payment of the principal or interest of said bond- or some of them, or in the maintenance of insurance, or in the payment of taxes or assessments as herein provided, or until default shall be made in respect to something by these presents required to be done by said party of the first part, the American Ice Company shall be permitted and suffered to possess, manage, develop, operate and enjoy the plant and property herein conveyed and intended so to be and to take and use the income, rents, issues and profits thereof in the same manner, to the same extent, and with the same effect as if this deed had not been made.

Article 2. If said American Ice Company shall well and faithfully pay the principal sum due on said bonds when the same become payable according to the tenor thereof, together with the interest accrued and due thereon, and shall pay all the coupons attached to said bond- and each of them according to the tenor thereof on the presentation of the said coupons respectively and shall well and truly perform, according to the true intent and meaning hereof all the other things required by these presents to be done by said American Ice Company, then these presents shall be void, but if default shall be made by said American Ice Company in the payment of said bonds or any of them at the time they fall due and payable, or if said American Ice Company shall fail to pay said coupons or any of them according to the tenor thereof on the presentation and surrender of the same respectively, or if it shall fail faithfully to observe the requirements made of it by these presents and such default shall continue for the space of ninety days, then the whole amount of the principal of said bonds, together with all accrued and unpaid interest thereon (unless such default be waived by the holders of the majority of the bonds then outstanding as hereinafter provided) shall be deemed immediately due and payable; and it shall be lawful for the trustee to enter into or upon the premises and property hereby granted or intended so to be and to take possession of the whole or any part thereof and to sell and dispose of all and singular the premises, property, rights, interests and franchises hereby conveyed or mortgaged, or intended so to be, or such portion as the trustee may deem necessary at public auction

in said Bangor upon such terms as to credit, partial credit and security for payment as it may think proper or expedient having first given public notice of the time and place of the sale or sales by advertisement printed not less than once a week for at least four successive weeks in one or more newspapers printed and published in said Bangor and also in Washington aforesaid. The trustee shall have the right to adjourn such sale or sales from time to time in its discretion giving reasonable notice
37 of each adjournment and after so adjourning to make the sale at the time and place to which the same may be adjourned; and no other notice or demand whatsoever to or upon the party of the first part shall be necessary. The trustee is hereby further authorized and empowered in its own name or in the name of the American Ice Company to make, execute, acknowledge and deliver to the purchaser or purchasers at such sale a good and sufficient deed or deeds of conveyance of the property so sold; and any sale made as aforesaid shall be a perpetual bar both at law and in equity against the*w* American Ice Company and all persons claiming by, through, or under it from claiming the property, rights, interest and franchises so sold or any interest therein. And for the purposes aforesaid the party of the second part and its successors in the trust are hereby constituted irrevocably the attorney of said American Ice Company. Out of the proceeds arising from such sale or sales the trustee shall first defray the expenses thereof, together with its just and lawful charges for services and expenses, including reasonable allowance for attorney and counsel fees and also all advances and expenses reasonably incurred by the trustee in operating, maintaining, or managing the property or business of the American Ice Company while in possession and all payments made by said trustee for taxes, assessments, insurance and other proper charges upon said premises and property. The balance of said proceeds shall be paid over ratably to and amongst the parties holding said bonds and coupons so far as any be necessary to pay the amounts then due upon the same including the principal and interest*ed* computed to the time of making the payment; and if any of said proceeds then remain, the remainder shall be paid over to said American Ice Company or its assigns. It is hereby declared and agreed that the receipt of the trustee shall be a sufficient discharge to the purchaser or purchasers for his or their purchase-money; and that the bondholders or any number of them or any person in their behalf may purchase at any sale made as aforesaid.

Article 3. The foregoing provision for a sale under the power aforesaid is cumulative with the ordinary remedy of foreclosure by entry or suit therefor, and the trustee hereunder may upon default being made as aforesaid, institute and carry out proceedings to foreclose this mortgage or deed of trust by suit or otherwise in such manner as may be authorized by law for the foreclosure of mortgages of real estate. And the American Ice Company hereby waives any and all rights of sale or redemption now or hereafter provided by the statutes of Maine or of the United States.

Article 4. Before proceeding to foreclose this deed or mortgage

whether by sale under said power or otherwise the trustee shall have to right first to exact from the bondholders reasonable indemnity against loss and liability that may be incurred by it in so doing and upon the tender by the bondholders or any of them of such reasonable indemnity, whether previously requested of them, or not, it shall be the duty of the trustee in case of any default continuing on the part of said American Ice Company and not
38 waived as hereinafter provided, to foreclose in such lawful manner as the trustee may deem best.

Article 5. No delay or omission by the trustee in exercising the rights and powers herein granted shall be held to exhaust or impair such rights and powers or be construed as a waiver thereof, but it is hereby mutually agreed that the holders of a majority in amount of the bonds at the time outstanding may by and instrument in writing at any time, whether before or after the institution of foreclosure proceedings, waive, or instruct the trustee to waive any default provided always that no such act on the part of the bondholders shall extend to or be taken to effect any subsequent default, or impair the rights resulting therefrom.

Article 6. The American Ice Company agrees at all times upon request to furnish the trustee a schedule showing with reasonable detail the items of the estate, property and other things covered by the lien hereof or intended so to be; and the trustee shall have the power from time to time to release from the lien of this deed any of the property when in its judgment other property of equal value is substituted therefor and subjected to the lien hereof so that such release shall not injure the security or rights of the bondholders.

Article 7. The American Ice Company hereby expressly covenants and agrees to pay any and all taxes, assessments, and governmental charges assessed or laid upon the property herein conveyed or intended so to be and also to keep said premises and property at all times insured in such insurance companies as may be approved by the trustee in such amounts as shall reasonably protect all the insurable property payable in case of loss to the trustee as its interest may appear. In case of loss the insurance money may be applied by the trustee toward the renewal of, or additions to the property destroyed or injured, or at the option of the trustee the money may either be retained and invested in such securities as it approves, as a sinking fund for the redemption of the bonds when due, or be applied to the payment of the principal of such of the aforesaid bonds as may be at the time due and unpaid and of the interest which may at that time have accrued upon the principal and be unpaid, without discrimination or preference; and ratably to the aggregate amount of said unpaid principal and accrued and unpaid interest, rendering the surplus if any to the American Ice Company or to whomsoever may be, lawfully and equitably entitled to receive the same.

Article 8. The trustee shall not be liable for any neglect, mismanagement, or misfeasance or any of its or their agents, attorneys, or servants in relation to taking possession of, controlling, operating,

managing, or selling the premises or property aforesaid when said agents and servants have been selected with reasonable care.

Article 9. The American Ice Company agrees hereafter from time to time during the existence of this trust and mortgage to make, execute, acknowledge, and deliver all such further instruments and conveyances as in the opinion of the legal counsel of the trustee may be necessary to facilitate the execution of said trust or
39 further to secure the rights and remedies of the holders of said bond.

Article 10. The word "trustee" as employed in this instrument shall be taken to mean the trustee hereunder for the time being whether said party of the second part or its successor or successors in said trust.

Article 11. The party of the first part as the agent of the party of the second part shall forthwith cause this indenture to be recorded as a mortgage both of real estate and personal property as may be required by the laws of the State of Maine and of the District of Columbia, so as to preserve and protect the rights of the bondholders and all parties hereto.

In testimony whereof the said American Ice Company has caused these presents and a duplicate hereof to be signed in its name and behalf and its corporate seal to be affixed to this and said duplicate by Francis H. Clergue, its president and Charles E. Field, its secretary, and the said Eastern Trust and Banking Company has caused these presents and said duplicate to be signed in its name and behalf and its corporate seal to be affixed hereto and to said duplicate by George B. Cauney its secretary, the day and year first above written.

AMERICAN ICE COMPANY,
By FRANCIS H. CLERGUE, *President.*
CHAS. E. FIELD, *Secretary.*
EASTERN TRUST AND BANKING COMPANY,
By GEO. B. CAUNEY, *Sec'y.*

Signed, sealed, & delivered in presence of—
J. R. MASON.

STATE OF MAINE, }
Penobscot, } ss:

DECEMBER 31ST, 1889.

I, John R. Mason, a notary public in and for the county aforesaid, do hereby certify that Francis H. Clergue, president of the American Ice Company, and Charles E. Field, secretary of said company, who executed in behalf of said company a certain deed bearing date on the second day of December, A. D. 1889, and hereto annexed, personally appeared before me in said county, both being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be the free act and deed of themselves and of said corporation.

Given under my hand and notarial seal this thirty-first day of December, A. D. 1889.

[NOTARIAL SEAL.] JOHN R. MASON,
Notary Public.

STATE OF MAINE, *Penobscot*, } ss:

I, Charles F. Sweet, clerk of all the judicial courts in said county, certify that John R. Mason, Esquire, is and was at the date of his certificate an acting notary public in and for said county, duly commissioned and qualified to act as such, and that the signature to the paper annexed, purporting to be his, is genuine, and that he is duly authorized and empowered by the laws of said State to administer oaths, to take depositions, acknowledgments of deeds, assignments, and powers of attorney, and that the annexed instrument is executed and acknowledged according to the laws of this State.

In testimony whereof I have hereunto set my hand and affixed the seal of the supreme judicial court for said State this tenth day of January, in the year of our Lord one thousand eight hundred and ninety.

CHAS. T. SWEET, *Clerk.* [COURT SEAL.]

Indorsement.

Fee, $7.00.

This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 1439, vol. 417 *et seq.*, one of the land records of the District of Columbia.

Office of the recorder of deeds, Washington, D. C., September 21, 1894.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder of Deeds.

Copy.

E. T. & B. Co., EXHIBIT No. 4.

Filed November 17, 1894.

This agreement, made this twenty-ninth day of January, A. D. 1894, by and between William G. Johnson, assignee of the American Ice Company, of the city of Washington, District of Columbia, of the first part, and Edward M. Willis, of the same place of the second part witnesseth:

That the said William G. Johnson, assignee as aforesaid, under and by virtue of the authority and direction of the supreme court of the District of Columbia, in its order this day passed in the suit of Charles E. Field *vs.* The American Ice Company and others, No. 15063 of the equity docket of said court, in consideration of the rents, covenants and agreements hereinafter mentioned and on the part of the said party of the second part to be paid, observed and

performed, hath let and demised and doth by these presents let and demise unto the said party of the second part all that certain real estate, wharves and improvements in the city of Washington, District of Columbia, known as all the property of the American
41 Ice Company lying southwest of Water streets opposite square numbered two hundred and seventy, with the ice-house and wharf situated thereon and the necessary tools and machinery for the discharging and storing of ice, together with the scales and office furniture for the term of one year, beginning therefor on the twenty-ninth day of January, A. D. 1894, and fully to be complete and ended on January 28th, 1895.

To have and to hold the same unto and to the use of the said party of the second part his executors and administrators, yielding and paying therefor monthly and on the last day of each and every month during the continuance of this agreement the monthly rent of one hundred and thirty dollars to the said party of the first part, his heirs, executors and administrators at his or their place of business No. 344 D street, northwest, Washington, D. C., or wher-soever the said office or place of business for the time being may be.

Provided always, and it is hereby expressly stipulated and agreed, that this lease and all rights of the parties hereunder, shall cease and determine in the event of the eviction by the lawful enforcement of the rights of the first-mortgage bondholders of the said American Ice Company or eviction by the lawful enforcements of the rights, if any, of the Government of the United States, or an actual sale under the direction of the court by said party of the first part of said property or any portion thereof.

And it is further covenanted and agreed that should the said monthly rent or any part thereof be and remain unpaid for and during the space of ten (10) days next after the day whereon the same ought to be paid by the terms hereof, although no demand shall have been made therefor, and which demand is hereby expressly waived, then the said party of the first part, his heirs, executors and administrators shall have the right to enter upon said premises and the party of the second part utterly to put out and expel without any notice of thirty days as provided in section 681 of the Revised Statutes of the United States relating to the District of Columbia or any other notice whatsoever; all notice whatsoever, being by the said party of the second part, hereby expressly waived, and this lease shall thereupon, at the option of the party of the first part cease and determine.

It is also hereby covenanted and agreed by the said party of the second part that he shall not assign this lease nor sublet the said premises without the written consent of the party of the first part had and obtained, and that he, the said party of the second part, will at all times during his continuance in the possession of the said premises acknowledge the title and defend the possession of the said party of the first part, his heirs, executors and administrators, and that he will not acquire or seek to acquire title thereto, nor acknowledge title thereto in any other person without first

surrendering actual possession thereof to the party of the first part his heirs, executors and administrators, except by the written consent of the said party of the first part, his heirs, executors and administrators.

It is further covenanted and agreed that the said party of
42 the second part shall keep the said premises in the same good condition and repair in which they now are, damage by fire, the elements or trespassers and ordinary wear and tear from reasonable and careful use of the same excepted.

It is further stipulated and agreed that the breach by the party of the second part of any of the covenants, agreements, stipulations, or provisions herein contained, shall give the party of the first part the same right of possession and determination of this lease without notice, as is provided in case of non-payment of rent, and no such breach shall be treated as waived unless expressly so waived in writing, and no waiver of one breach shall operate as a waiver of any other breach.

In testimony whereof, the said party of the first part, as assignee, as aforesaid, and the party of the second part, have hereunto set their hands and seals on the day and year first hereinbefore written, in duplicate.

(Signed) ——— ———. [SEAL.]
EDWARD M. WILLIS. [SEAL.]

WEDNESDAY, *December* 19, 1894.

Session resumed pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * * * *

EASTERN TRUST AND BANKING CO., Plaintiff,
v.
EDWARD M. WILLIS, Defendant. } At Law. No. 36903 Appeals 40.

And now come here the plaintiff, by its attorney, Mr. B. F. Leighton, and the defendant, by his attorney, Mr. W. G. Johnson, and submit this case to the court upon an agreed statement of facts, and, the same having been heard and fully understood, the court finds the matters of difference between the parties in favor of the defendant; therefore it is considered that the plaintiff take nothing by its suit, and that the defendant go thereof without day and recover against said plaintiff his costs of defense, to be taxed by the clerk, and have execution thereof.

WEDNESDAY, *December* 19, 1894.

Session resumed pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * * * *

EASTERN TRUST AND BANKING CO., Plaintiff, *v.* WILLIAM G. JOHNSON, Assignee, Defendant. } At Law. No. 36904, Appeals 41.

And now come here the plaintiff, by its attorney, Mr. B. F. Leighton, and the defendant, by his attorney, Mr. W. G. Johnson, and submit this case to the court upon an agreed statement of facts, and, the same having been heard and fully understood, the
43 court finds the matters of difference between the parties in favor of the defendant; therefore it is considered that the plaintiff take nothing by its suit, and that the defendant go thereof without day and recover against said plaintiff his costs of defense, to be taxed by the clerk, and have execution thereof.

Notice of Appeal.

Filed December 22, 1894.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING CO. *vs.* EDWARD M. WILLIS, Defendant. } At Law. No. 36903.

SAME *vs.* WM. G. JOHNSON, Assignee, Def't. } At Law. No. 36904.

The plaintiff appeals from the judgment rendered against it in the above-entitled causes to the Court of Appeals of the District of Columbia.

B. F. LEIGHTON,
Attorney for Plaintiff.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY *vs.* EDWARD M. WILLIS and SAME *vs.* WILLIAM G. JOHNSON, Assignee.	At Law. Nos. 36903 and 36904.

The President of the United States to Edward M. Willis and William G. Johnson, assignee, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the clerk's office of the supreme court of the District of Columbia on the 22 day of December, 1894, wherein The "Eastern Trust and Banking Company" is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia. 44

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 22 day of December, in the year of our Lord one thousand eight hundred and ninety-four.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 24 day of December, 1894.

WM. G. JOHNSON,
Attorney for Appellee.

(Endorsed:) Nos. 36903, 36904. Law. Eastern Trust and Banking Company *vs.* Edward M. Willis and Wm. G. Johnson, assignee. Citation. Issue Dec. 22, 1894. Served cop- of the within citation on —— ——. —— ——, marshal. B. F. Leighton, attorney for appellant.

Opinion.

Filed December 29, 1894.

EASTERN TRUST & BANKING CO. *vs.* EDWARD M. WILLIS.	Law.	No. 36903.
SAME *vs.* WILLIAM G. JOHNSON.	Law.	No. 36904.

These cases are identical in fact, save as to the property involved,

and differ as to defendants. They have been submitted upon an agreed statement of facts, applicable to and filed in each case, for the judgment of the court without a jury. They were instituted under what is known as the landlord & tenant act, to recover possession of the realty described in the proceedings, before a justice of the peace, and were certified to this court by the justice upon a plea of title.

In each case the pl'ff claims a fee-simple by the declaration filed in compliance with the rule of court.

By the agreed statement of facts it appears that the rights of the plaintiff are fixed and determined by a deed of trust from the American Ice Co., a copy of which is filed as an exhibit with the statement.

The deed of trust conveys the property in question to the pl'ff to secure the payment of certain bonds described therein, with accruing interest. By it it is provided that the American Ice Co. shall be permitted and suffered to possess, manage, &c., and to take and use the income, rents, &c., until default be made in the payment of the principal or interest of the bonds. It is also provided
45 that upon default made, &c., it shall be lawful for the trustee to enter into the premises & take possession of the whole or any part thereof, and to sell & dispose of all or such portion as the trustee may deem necessary, at public auction, in Bangor, upon terms of sale prescribed.

The statement of facts shows that default was made in the payment of the debt secured by the trust, and that the property in question was advertised for sale by the trustee and was sold Sept. 4, 1894, the purchasers being a committee acting for the bondholders; that the terms of sale have not been complied with, because it had been agreed between the purchasers and trustee that the latter should first obtain possession of the property; that these actions were instituted pursuant to such agreement.

One of the objections urged by the defendants to maintaining these actions is that the pl'ff is a foreign corporation authorized by its charter to conduct its business solely within the State of Maine, and that under the policy of the laws in force in the District of Columbia corporations organized therein were not permitted to exercise the powers of trustee. The charter of the pl'ff, which has been put in evidence, while not containing express authority to transact business out of the State, does not prohibit it, neither did any law in force in the District of Columbia, nor any public policy deduced from general legislation, nor any settled adjudications of the highest courts of this District prohibit the exercise of such powers by a foreign corporation within its limits. Under these circumstances, in harmony with the general law of comity among the States, a foreign corporation may exercise its powers in the District of Columbia.

Bank of Augusta *v.* Earle, 13 Pet., 519.
Runyon *v.* Lessee of Coster *et al.*, 14 Pet., 122.
Cowell *v.* Colo. Springs Co., 100 U. S., 55.
Christian Union *v.* Fount, 101 U. S., 352.

It is also urged as matter of defence that the relation of landlord and tenant did not exist between the pl'ff and def'ts, and that therefore the law did not authorize these actions and the justice of the peace had no jurisdiction of the cause of action.

The Court of Appeals of this District has recently decided that the act of Congress of July 4, 1864, entitled "An act to regulate proceedings in cases between landlord and tenants in the District of Columbia," applied to the case of a purchaser at a sale made by a trustee under an ordinary deed of trust of land as security for debt and grantee of such trustee against the grantor in such deed of trust in possession. That court held that the reservation in the deed of trust of the right of possession to the grantor until default made in the payment of the debt secured operated as *are* demise by the trustee (grantee) to the grantor, and created the relation of landlord & tenant between those parties; that the grantee of the trustee was vested with his rights to the possession and might maintain the action.

Laring *v.* Bartlett, Law Rep., June 21, '94.

46 In the case of Luchs *v.* Jones, 1 MacA., 345, the general term dismissed the appeal for want of jurisdiction, but the justice delivering the opinion of the court held that under like circumstances the grantor in possession after sale made and deed delivered by the trustee to the purchaser became, by operation of law, tenant by sufferance of the purchaser, & that the landlord & tenant act of July 4, 1864, did not require that the relation of landlord & tenant should exist by the convention of the parties in order to give jurisdiction.

That decision has never been regarded as authority, and for nearly twenty years this court, both in special & general term, has uniformly held that unless the conventional relations of landlord & tenant existed between the parties a justice of the peace under that act has no jurisdiction of a question of disputed possession, and it has so ruled in cases like that of Luchs & Jones.

See Jennings & Webb, 20 D. C., 317.

Whether the reasoning of the Court of Appeals be approved or not, its conclusion is authoritative with this court, and to me appears to settle the question of the jurisdiction of the justice of the peace in this case, notwithstanding the fact that in the cases at bar the controversy is between the trustee and the grantor in the trust deed, while the case adjudicated was between the purchaser from the trustee and the grantor in the trust deed.

It is further urged in defence that inasmuch as it appears by the agreed statement of facts that the trustee has executed the trust power to the extent of making the sale and has entered into an agreement with the purchasers to obtain possession for them that these actions cannot be maintained.

Whether the deed of trust contemplates the possession of the trust property by the trustee for the purposes of management upon default made in the payment of the debt need not be determined, for the

trustee has not assumed to exercise such power. It does in terms authorize the trustee to take possession of the property and to sell such portion as it may deem necessary upon default made by the debtor. Such possession is authorized in aid of a sale to be made by the trustee. The power is to take possession and sell. The trust deed also unquestionably confers authority upon the trustee to sell without first taking possession. This power the trustee has exercised; it has made sale.

The right of the purchaser will be perfected upon the execution & delivery of a deed by the trustee, and that is the sole remaining function to be performed by the trustee under the power of sale. No power is given it to take or acquire possession after sale made at the instance or for the convenience of the purchaser. Its powers are limited to those declared in the trust deed. Those powers cannot be enlarged or added to by subsequent convention between it and the purchaser. It is not indicated that possession is sought in its own right, but at the instance of and in order that when acquired it may be turned over forthwith to the purchaser.

It has the title, for it has not yet conveyed, but, under existing circumstances, it has neither the right of property nor the
47 right of possession. These actions cannot be maintained and judgment must be for the defendant in each case.

1895, January 5.—$50.00 deposited in each case in lieu of bond for appeal.

Stipulation.

Filed January 7, 1894.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING CO. *vs.* EDWARD M. WILLIS. } At Law. No. 36903.

SAME *vs.* WILLIAM G. JOHNSON, Assignee. } At Law. No. 36904.

The parties to the above-entitled causes, by their respective attorneys, hereby stipulate and agree that the record on appeal to the Court of Appeals of the District of Columbia from the judgment rendered in said causes shall consist of the following, to wit:

1. The complaint before the justice of the peace in No. 36903, the plea thereto, and the declaration filed in said cause. (The complaint, plea, and declaration are the same in No. 36904, the name of the defendant being changed, except as appears in the agreed statement of facts, and are to be considered as if set out *in extenso* on the record.)
2. The agreed statement of facts.
3. The charter of the plaintiff. (Exhibit "E. T. & B. Co. No. 1.")
4. The mortgage or deed of trust in full. (" " " No. 2.)
5. The lease. (" " " No. 4.)

6. And the opinion of the court. (The assignment referred to in the agreed statement of facts was made under the act of Congress approved May 24, 1893.)

B. F. LEIGHTON,
Attorney for Plaintiff.
WM. G. JOHNSON,
Attorney for Defendants.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 49, inclusive, are true copies of the originals in causes numbered 36903 and 36904, wherein The Eastern Trust and
48 Banking Co. is plaintiff and Edward M. Willis and Wm. G. Johnson are the respective defendants, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 24th day of January, A. D. 1895.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 425. The "Eastern Trust and Banking Company," appellant, *vs.* Edward M. Willis and William G. Johnson, assignee. Court of Appeals, District of Columbia. Filed Jan. 28, 1895. Robert Willett, clerk.

49 *Separate Answer of the Corcoran Fire Insurance Company.*

Filed May 5, 1896.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY *vs.* AMERICAN ICE COMPANY *et al.* } No. 17259. In Equity.

The separate answer of the defendant Corcoran Fire Insurance Company of the District of Columbia to the bill of complaint of the above-named complainant against it and others in chancery exhibited.

1 to 7. This defendant has no knowledge of the matters and things averred in the first, second, third, fourth, fifth, sixth, and seventh paragraphs of the bill, and can neither admit nor deny the same, and, if material, demands strict proof thereof, save that it admits that this defendant is a body corporate, organized under the laws of the United States relating to the District of Columbia, hav-

ing an office in this District and engaged in business as an underwriter of insurance against loss or damage by fire.

8. Answering the eighth paragraph of said bill, this defendant says that it is true that the defendant Johnson obtained from this defendant a policy of insurance against loss by fire to the extent of one thousand dollars upon the frame ice-house located in front of square 270, in the city of Washington, but that it has no knowledge as to the source from which the said Johnson obtained the
50 money with which to pay the premium upon said policy.

9. Answering the ninth paragraph, this defendant says that it is true that the said building was totally destroyed by accidental fire, and that damage thereby resulted, but this defendant cannot state to what extent, as it does not know what interest or title the party insured had in said premises at the time of the said fire; but it denies that the said policy of insurance was in full force and virtue on the 11th of February, 1896, or at any other time, because it says that by the express terms of said policy it is provided as follows:

"II. This policy shall be void in each and every of the following cases, unless otherwise specified or consented to hereon, to wit: * * * 6. If all the liens (whether by mortgage, judgment, or otherwise) on any part of said property are not expressed hereon."

That at the time of the issuing of said policy there was, as this defendant is informed and believes, a valid outstanding deed of trust to secure a considerable indebtedness, whereof this defendant had no notice or knowledge whatsoever, and that by reason thereof the said policy was and is of no effect.

This defendant further says that it has never set up and insisted upon its legal defense to the said policy as against the said Johnson, the party insured thereby, but that it does insist that no legal liability exists, and that any payment made by this defendant by reason of the said policy will be as a matter of grace and
51 favor by this defendant under its policy and not a matter of legal right on the part of any person whomsoever.

This defendant further says that it has no knowledge of the other matters and things in the said bill averred and can neither admit nor deny the same.

Further answering, this defendant says that it did not in and by said policy undertake or agree to insure the said property against loss or damage by fire for the purposes set out in the deed of trust to the complainant referred to in the bill, but that, on the contrary, it had no knowledge whatever of the deed of trust, and that the said policy was made payable to Johnson and was issued by this defendant upon the express understanding that this defendant was insuring the interest of the defendant Johnson as the assignee of the American Ice Company and that interest alone, and that it never had knowledge of the existence of any other interest or claim to said property and never undertook or agreed to insure the same against loss or damage of any kind.

And, having fully answered, this defendant prays to be hence dismissed with its reasonable costs in this behalf sustained.

THE CORCORAN FIRE INS. CO. OF THE DIST. OF COL.,
[SEAL.] By L. R. PEAK, *Sec'y.*

DISTRICT OF COLUMBIA, *ss:*

I L. R. Peak, being duly sworn, deposes and says that he is the secretary of the Corcoran Fire Insurance Company of the
52 District of Columbia, whose corporate name is subscribed to the foregoing answer; that he has read the said answer and knows the contents thereof, and that the matters and things therein stated on his personal knowledge are true, and those stated on information and belief he believes to be true.

L. R. PEAK.

Subscribed and sworn to before me this 5th day of May, A. D. 1896.

HARRY C. BIRGE,
[SEAL.] *Notary Public.*

Joint and Separate Answer of the Defendants American Ice Company and Edward M. Willis.

Filed October 24, 1896.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY
vs.
THE AMERICAN ICE COMPANY *et al.* } No. 17259. In Equity.

The joint and separate answer of the defendants The American Ice Company and Edward M. Willis to the bill of complaint against them and others in chancery exhibited.

1 and 2. These defendants admit the averments of the first and second paragraphs of the bill to be substantially correct,
53 except that they do not admit that the said deed of trust was a valid conveyance in law of the title of the property of the defendant The American Ice Company to the complainant, because they say that they are advised and believe, and therefore aver, that the complainant was not authorized by its charter nor by the laws of the United States in force in this District to take said title for the uses and purposes therein described nor to execute the trusts therein mentioned, but they admit that the said deed constitutes a valid equitable mortgage upon the property of the defendant The American Ice Company for the benefit of the holders of the bonds therein described.

3. Answering the third paragraph, these defendants say that they have no knowledge of the amount of the bonds nor who holds the same, nor how much, if any, of the said indebtedness or the inter-

est thereon remains due and unpaid, and can neither admit nor deny the averments of the said paragraph, and, if material, demand proof thereof.

4. These defendants admit to be substantially true the fourth paragraph of said bill.

5. These defendants have no knowledge as to the averments of the fifth paragraph of the bill as to the directions to the complainant to execute the deed of trust or the execution thereof by the complainant, and can neither admit nor deny the same, but, if material, demand strict proof thereof; but these defendants are informed and believe that the complainant undertook to sell, in the city of Bangor, in the State of Maine, the real estate located in the city of Washington, District of Columbia, belonging to the defendant The American Ice Company and by it conveyed to the
54 defendant William G. Johnson as its assignee in trust for the benefit of all its creditors; that these defendants have no knowledge as to the manner in which the said sale was conducted or who were the alleged purchasers or the price paid therefor, if anything, and that all information with respect thereto has been withheld from these defendants by the complainant, although the assignee of the defendant The American Ice Company, William G. Johnson aforesaid, has requested the agents of the complainant to furnish information with regard thereto; and these defendants are advised and believe, and therefore aver, that the said alleged sale of the real estate located in Washington is invalid and should be set aside.

These defendants have no knowledge of the averments of said paragraph as to the agreement between the purchasers at said sale and the complainant as to the complainant securing possession of the property for such purchasers at such sale and can neither admit nor deny the same, nor can they admit the validity of any such agreement on the part of the complainant, and these defendants are bound to insist that if the purchasers bought the property with notice of any adverse title thereto they are not entitled to the aid of a court of equity to relieve them from the consequences of such a purchase.

The defendants further say that the averments in the said fifth paragraph as to the proceedings before the justice of the peace in this court, in the Court of Appeals, and the Supreme Court of the United States for possession of said property are stated with
55 probable accuracy, but for certainty they prefer to refer to the said proceedings themselves as to their character and the disposition thereof.

6. Answering the sixth paragraph of said bill, these defendants say that they have no knowledge as to the matters and things therein set up and can neither admit nor deny the same, and, if material, they demand strict proof thereof; but they are advised and believe, and therefore charge, that any such agreement as is therein averred to have been made between the complainant and the purchasers was invalid and void.

7. Answering the seventh paragraph of said bill, these defend-

ants admit that the defendant Willis continued in the possession of the said property as the tenant of the defendant William G. Johnson, assignee, until about the eleventh day of February, 1896, when the improvements upon said real estate were totally destroyed by fire, and that the defendant Johnson, assignee, received the rent therefor from the defendant Willis during his occupation thereof. But these defendants, on information and belief, deny that the said defendant Johnson, assignee, is obliged to account to the complainant for said rents, and aver that, even if the complainany should ultimately be adjudged by the Supreme Court of the United States, in the proceedings there pending, to be entitled to the possession of the said premises, the said defendant, Johnson, assignee, would be obliged to account for the said rents in that proceeding or in a suit upon the supersedeas bond therein given, and that he cannot be required to account for the said rents in this proceeding or otherwise to acknowledge the right or title of the complainant to
56 the said premises, because it would be a violation of the supersedeas of the judgment for possession obtained by the complainant on the law side of this court and now pending on writ of error in the Supreme Court of the United States, and that until the final judgment of the Supreme Court of the United States in said case affirming the title of the said real estate to the complainant, the said defendant, Johnson, assignee, cannot be required, in this or any other proceeding, to account to the complainant for the possession or rents of the said real estate.

8. Answering the eighth paragraph of said bill, these defendants say that it is true that the defendant Johnson, assignee, procured policies of insurance for the amount stated in said paragraph from the companies named therein for the purpose, as these defendants are informed and believe, of indemnifying him against loss or damage by fire, but these defendants deny that the said insurance was procured by the said defendant, Johnson, assignee, in pursuance of the said alleged deed of trust to the complainant or of any of the provisions thereof, but, on the contrary, was secured by the said Johnson, as assignee aforesaid, to protect such interests as he, as assignee, might have in the said real estate and for the equal benefit of all the creditors of the defendant The American Ice Company, and not for the benefit of the said bondholders alone.

9. Answering the ninth paragraph of said bill, these defendants say that it is true that on or about the eleventh day of February, 1896, the improvements upon said real estate in this District were totally destroyed by fire; but, on information and belief,
57 they deny that by reason thereof the defendant Johnson, assignee, became entitled to, or the said insurance companies became liable to pay, the amount of indemnity specified in their policies; but, on the contrary, these defendants are informed and believe, and therefore aver, that by the terms of said policies the insurance companies were not bound to pay the said sums to the said defendant, Johnson, assignee, because of the fact of alleged liens upon the title to said property not disclosed to said companies at the time of the taking out of said insurance. But these defendants

are informed and believe, and therefore charge, that the said companies subsequently waived said defense as a matter of grace and favor to the defendant Johnson, assignee, personally, because the said companies became convinced that the said omission to inform them of said alleged liens had been accidental and unintentional on the part of the said defendant, Johnson, assignee; and these defendants are further informed and believe that the said insurance companies have never acknowledged any legal*ly* liability on the said policies, but have always expressly denied the same.

Further answering said paragraph, these defendants say that they are advised and believe that the said defendant, Johnson, assignee, was not obliged to effect insurance upon the said premises for the benefit of the said bondholders, but that the said bondholders claimed to have executed their alleged deed of trust by a sale of the said premises and proceeded for possession thereof, and that the said bondholders had thereby elected to consider the said deed of trust as executed and at an end, and any duties or obligations of the defendant The American Ice Company or its assigns under
58 the said mortgage became at an end, and thereupon it became the obligation of the complainant or the parties secured by the said alleged deed of trust from that time to insure their own interests in said premises, as it was the privilege of the defendant Johnson, assignee, to insure, as he did, such interest as he might have in the said real estate for the benefit of all the creditors of the defendant The American Ice Company under its deed of assignment.

And, further answering said paragraph, these defendants say that they are informed and believe that the said Johnson, assignee, did deny the right of the complainant to receive the said insurance money, but they are likewise informed and believe that the said defendant, Johnson, assignee, never declared his attention of collecting the said insurance money and applying the same to the payment of the claims of the general creditors under the deed of assignment from this defendant, The American Ice Company. On the contrary, these defendants are informed and believe that the only declaration made by the said Johnson, assignee, on the subject of said insurance money was that he would collect the same and hold it until the controversy over that question was judicially determined, asserting his belief to be that the money when collected by him would be legally distributable *pro rata* among all the creditors of this defendant, American Ice Company, including the bondholders; and these defendants deny the right of the complainant to receive the said insurance money or any part thereof.

Further answering said bill, these defendants say that they are informed and believe that since the filing of the bill in this cause the said complainant has consented to the payment of the
59 said money by all said insurance companies to the defendant Johnson, assignee, and that the same has been paid to the said defendant, Johnson, assignee, and that he now holds the same subject to the final adjudication of this court as to the rights of all parties therein.

10. Answering the tenth paragraph of said bill, these defendants

say that they have no knowledge of the matters and things therein set up except as to the proceedings in this court and *and* in the Supreme Court of the United States in the case of The United States *vs.* Morris *et al.*, No. 10306 of the equity dockets of this court, commonly known as "the Potomac Flats case," in which case this court adjudged the title to the real estate in this District, mentioned in the bill herein, to be the property of the United States. These defendants are informed and believe that an appeal to the Supreme Court of the United States has been taken from the said decree and is there pending and undecided, and that the complainant has never taken any steps to maintain its title to the said land in the said proceedings, but has failed and refused, though requested so to do, to contribute to any of the cost of the said litigation or in any way to defend the title thereto, and that the whole cost and labor of said defense has been borne exclusively by the defendant Johnson, assignee.

11. Answering the eleventh paragraph, these defendants deny that it would be to the interest or benefit of the beneficiaries under said deed of trust or of the parties secured under the deed of assignment for any receiver to be appointed by this court, and these defendants deny that there has been in said bill shown any cause to justify this court in taking from the defendant Johnson the
60 property legally vested in him for the benefit of all creditors, and these defendants claim the same benefit of this objection as if they had demurred to the bill therefor.

12. Answering the twelfth paragraph of said bill, these defendants say that they have no knowledge as to any of the matters and things therein set forth, but they deny that the complainant has any right in the present posture of affairs to foreclose the said deed of trust or mortgage which it claims to hold, because they say that the said complainant has already undertaken to foreclose the said trust by a sale of the real estate, and insisted and still insists upon the validity and effect of said foreclosure in the said proceedings for possession now pending in the Supreme Court of the United States, which judgment for possession there pending on writ of error the complainant still insists upon maintaining; and these defendants deny that the complainant has the right to both remedies, having elected to proceed under the other, and that it cannot undertake to foreclose said mortgage by proceedings in a court of equity while still insisting upon the effect and validity of the foreclosure proceedings already attempted, and by which it is claims that the title of the defendant Johnson, assignee, has been entirely extinguished and annulled; and these defendants claim the same benefit of this objection as if they had specially demurred to the bill therefor.

Further answering said bill, these defendants say that they are informed and believe, and therefore aver, that while the deed of assignment to the defendant Johnson, assignee, passed the property of this defendant, The American Ice Company, both in the
61 District of Columbia and the State of Maine, the complainant and the bondholders whom it claims to represent, by proceedings in the State of Maine, defeated the title of the defendant

Johnson, assignee as aforesaid, to any of the property there, and thereby the general creditors of this defendant, The American Ice Company, represented by the defendant Johnson, under said deed of assignment, were wholly debarred from any recourse to the said property in Maine, and the same has been wholly lost to the defendant Johnson, assignee of this defendant, The American Ice Company, and that, as appears in and by the averments in the bill herein, the complainant claims to have enforced its lien upon the said property in Maine to the exclusion of any rights of the general creditors, and that, as the complainant has the right to the recourse to the property there and here and the defendant Johnson, assignee as aforesaid, has recourse only to the property in this jurisdiction, these complainants are advised and believe that the said defendant, Johnson, assignee as aforesaid, is entitled to have the assets marshalled as between him and the complainant, and that the complainant is not entitled to have recourse to the property here until the claims of the general creditors have been satisfied, unless it first surrenders the property in Maine and consents to a resale of the whole property in the interest of all the creditors.

And, having fully answered, these defendants pray to be hence dismissed with their reasonable costs in this behalf.

AMERICAN ICE COMPANY.
E. M. WILLIS, *President.*
E. M. WILLIS.

CALDERON CARLISLE,
Solicitor for American Ice Co. and
E. M. Willis, Defendants.

62 Edward M. Willis, being first duly sworn, deposes and says that he has read the annexed and foregoing answer by him subscribed for the American Ice Company, as its president, and for himself personally, and that the matters and things therein stated on his personal knowledge are true and those stated on information and belief he believes to be true.

EDWARD M. WILLIS.

Subscribed and sworn to before me this twenty-fourth day of October, 1896.

OSCAR LUCKETT,
[SEAL.] *Notary Public.*

Separate Answer of the Defendant William G. Johnson, Assignee.

Filed October 24, 1896.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY
vs.
THE AMERICAN ICE COMPANY *et al.*
No 17259. In Equity.

The separate answer of the defendant William G. Johnson, assignee, to the bill of complaint against him and others in chancery exhibited.

63 1 and 2. This defendant admits the averments of the first and second paragraphs of the bill to be substantially correct, except that he does not admit that the said deed of trust was a valid conveyance in law of the title of the property of the American Ice Company to the complainant, because he says that the complainant was not authorized by its charter nor by the laws of the United States in force in this District to take the title for the uses and purposes therein described, nor to execute the trusts therein mentioned, but he admits that the said deed constitutes a valid, equitable mortgage upon the property of the American Ice Company for the benefit of the bondholders therein described.

3. Answering the third paragraph, this defendant says that he has no knowledge as to the amount of the bonds, nor who holds the same, nor how much, if any, of the said indebtedness or the interest thereon remains due and unpaid, and can neither admit nor deny the averments of the said third paragraph, and if material demands proof thereof.

4. This defendant admits to be substantially true the averments of the fourth paragraph of said bill.

5. This defendant has no knowledge as to the averments of the fifth paragraph of the bill as to the default in the deed of trust therein mentioned, or the directions to the complainant to execute the same, or the execution thereof by the complainant, and can therefore neither admit nor deny the same, and if material demands strict proof thereof; but this defendant is informed and believes that the said complainant undertook to sell, in the city of Bangor, in the State of Maine, the real estate located in the
64 city of Washington belonging to the defendant The American Ice Company and by it conveyed to this defendant as its assignee in trust for the benefit of all its creditors; that he has no knowledge as to the manner in which the said sale was conducted, or who were the alleged purchasers or the price paid therefor, if anything, and that all information with respect thereto has been withheld from this defendant by the complainant, although this defendant has requested the agents of the complainant to inform this defendant thereof.

And this defendant is advised and believes, and therefore avers, that the said alleged sale of the real estate in Washington is invalid and should be set aside.

This defendant has no knowledge of the averments in said paragraph as to the agreement between the purchasers at said sale and the complainant as to the complainant's securing possession of the property for such purchasers at such sale, and can neither admit nor deny the same; nor can he admit the validity of any such agreement on the part of the complainant, and is bound to insist that if the purchasers bought the property with notice of any adverse title thereto, they are not entitled to the aid of a court of equity to relieve them from the consequences of such purchase.

This defendant further says that the averments in the said fifth paragraph as to the proceedings before a justice of the peace, in this court, in the Court of Appeals, and in the Supreme Court of the United States for possession of said property are stated with probable accuracy, but that for certainty he prefers to refer to the
65 said proceedings themselves as to their character and the disposition thereof.

6. Answering the sixth paragraph of said bill, this defendant says that he has no knowledge, and if material he demands strict proof thereof; but this defendant is advised and believes, and therefore avers, that any such agreement as is therein charged to have been made between the complainant and the purchasers was invalid and void.

7. Answering the seventh paragraph of said bill, this defendant admits that the said Willis continued in the possession of the said property, as the tenant of this defendant, until about the eleventh day of February, 1896, when the improvements upon the said real estate were totally destroyed by fire, and that this defendant received the rent therefor from said Willis during his occupation thereof; but this defendant denies that he is obliged to account to the complainant therefor, and avers the fact to be that even if the complainant should ultimately be adjudged by the Supreme Court of the United States, in the proceedings therein pending, to be entitled to the possession of said premises, this defendant would be obliged to account for the said rents in that proceeding or in a suit upon the supersedeas bond therein given, and that he cannot be required to account for said rents in this proceeding or otherwise to acknowledge the right or title of the complainant to the said premises, because it would be a violation of the supersedeas of the judgment for possession obtained by the complainant on the law side of this court and now pending on writ of error in the Supreme Court of the United States, and that until the final judgment of the Supreme Court of the United States in said case, affirming the title of
66 the complainant to said real estate, this defendant cannot be required in this or any other proceeding to account to the complainant for the possession or rents of said real estate.

8. Answering the eighth paragraph of said bill, this defendant says that it is true that he procured policies of insurance for the amounts stated in said paragraph from the companies named

therein to indemnify him against loss or damage by fire; but he denies that the same was procured by him in pursuance of the said alleged deed of trust to the complainant or of any of the provisions thereof, but, on the contrary, was secured as assignee to protect such interest as he might have as assignee in the said real estate, and for the equal benefit of all the creditors of the said American Ice Company, and not for the benefit of the said bondholders alone.

9. Answering the ninth paragraph of said bill, this defendant denies that by reason thereof he became entitled to or the said insurance companies became liable to pay the amount of indemnity specified in their policies, and, on the contrary, this defendant avers that by the terms of said policies of insurance the insurance companies were not bound to pay the *the* said sum to this defendant because of the fact of alleged liens upon the said property not being disclosed by this defendant to said companies at the time of the insurance aforesaid; but this defendant avers that the said companies subsequently waived said defense as a matter of grace and favor to this defendant personally, because the said omission to inform them of said liens was found by them to have been accidental and unintentional, and they never did acknowledge any legal liability on the said policies, but expressly denied the same.

67 Further answering the said paragraph, this defendant says that he is advised and believes that he was not obliged to effect insurance upon the said premises for the benefit of the said bondholders, but that the said bondholders claimed to have executed their alleged deed of trust by a sale of the premises and proceeded for possession thereof, and they thereby elected to consider the said deed of trust as executed and at an end, and any duties and obligations of the mortgagor and its assigns thereunder thereby became at an end, and it was the obligation of the complainant or the parties secured under the said alleged deed of trust from that time to insure their own interest in said premises as it became the privilege of this defendant to insure as he did all such interest as he might have in the said real estate for the benefit of all the creditors under the deed of assignment.

And further answering said paragraph, this defendant says that it is true that he denied the right of the complainant to receive the said insurance money, but he expressly denies that he ever declared his intention of collecting the said sums and applying the same to the payment of the claims of the general creditors under said assignment, and, on the contrary, avers the fact to be that the only declaration that he made on the subject was that he would collect the said insurance and hold it until the controversy over that subject was judicially determined, but asserted his belief to be that the money when collected by him would be legally distributable *pro rata* among all the creditors of the American Ice Company, including the bondholders, and he denies the right of the complainant to receive the said money or any part thereof.

68 Further answering said paragraph of said bill, this defendant says that the said complainant has since the filing of its bill consented to the payment of the said money by said in-

surance companies to this defendant, and the same has been paid to him, and he holds the same subject to the final adjudication of this court as to the rights of all parties therein.

10. Answering the tenth paragraph of said bill, this defendant says that he has no knowledge of the matters and things therein set up, except as to the proceedings in this court and in the Supreme Court of the United States in the case of The United States *vs.* Morris *et al.*, No. 10306 of the equity dockets of this court, commonly known as the "Potomac Flats case," in which case this court adjudged the title to the real estate in this District mentioned in the bill to be the property of the United States; that an appeal to the Supreme Court of the United States has been taken from the said decree and is there pending and undecided; and this defendant avers that the complainant has never taken any steps to maintain its title to the said land in the said proceedings, but has failed and refused, though requested so to do, to contribute to any of the cost of the said litigation, or in any way to defend the title thereto, and the whole cost and labor of said defense has been born exclusively by this defendant.

11. Answering the eleventh paragraph, this defendant denies that it would be to the interest of the beneficiaries under the said alleged deed of trust or of the parties secured under the deed of assignment for a receiver to be appointed by this court, and he denies that there has been in said bill shown any cause to justify this court in
69 taking from this defendant the property legally vested in him for the benefit of all creditors, and he claims the same benefit of this objection as if he had demurred to the bill therefor.

12. Answering the twelfth paragraph, this defendant says that he has no knowledge as to any of the matters and things therein set forth, but he denies that the complainant has now the right in the present posture of affairs to foreclose the said deed of trust by a sale of the real estate, and insisted and still insists upon the validity and effect of such foreclosure in the said proceedings for possession now pending in the Supreme Court of the United States, which judgment for possession there pending on writ of error the complainant still insists upon maintaining; and this defendant denies that the complainant has the right to both remedies, having elected to proceed under the other, and that it cannot undertake to foreclose the said mortgage by proceedings in a court of equity while still insisting upon the effect and validity of the foreclosure proceedings already attempted and by which it claims that the title of this defendant has been entirely extinguished and annulled; and this defendant claims the same benefit of this objection as if he had specially demurred to the bill therefor.

Further answering said bill, this defendant says that while the deed of assignment to this defendant passed all property, both in the District of Columbia and in the State of Maine, the complainant and the bondholders whom it claims to represent, by proceedings in the State of Maine, defeated the title of the assignee to any of the property there, and thereby the general creditors represented by this defendant under the deed of assignment were wholly

70 debarred from any recourse to the said property in Maine, and the same has been wholly lost to this defendant, as assignee of the American Ice Company, and that, as appears in and by the averments of said bill, the complainant claims to have enforced its lien on the said property in Maine to the exclusion of any rights of the general creditors, and that as the general creditors and that as the complainant has the right to the recourse to the property there and here, and this defendant, as assignee, has recourse only to the property here, he is advised and believes that he is entitled to have the assets marshalled as between him and the complainant, and that the complainant is not entitled to have recourse to the assets here until the claims of the general creditors have been satisfied, unless it first surrenders the property in Maine and consents to a resale of the whole property in the interest of all the creditors.

And, having fully answered, this defendant prays to be hence dismissed with his reasonable costs in this behalf.

WM. G. JOHNSON, *Assignee.*

CALDERON CARLISLE,
Solicitor for Defendant.

I do solemnly swear that I have read the annexed and aforegoing answer by me subscribed and know the contents thereof, and that the matters and things therein stated on my personal knowledge are true and those stated on information and belief I believe to be true.

WM. G. JOHNSON.

Subscribed and sworn to before me this twenty-third day of October, A. D. 1896.

[SEAL.] OSCAR LUCKETT,
Notary Public.

71 *Deposition of George B. Canney.*

Filed November 19, 1896.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Plaintiff, *vs.* AMERICAN ICE COMPANY *et als.*, Defendants. } No. 17259. In Equity.

It is hereby stipulated and agreed by and between the counsel for the plaintiff and defendants that the deposition of George B. Canney may be taken before Judge Thomas W. Vose, a notary public in and for the city of Bangor, in the State of Maine, and that the same may be taken down stenographically, and when transcribed by the stenographer and signed by the witness be returned by the said Vose to the supreme court of the District of Columbia, together

with his certificate, and that said deposition may be read in the said cause without objection.

W. G. JOHNSON,
For Defendants.
CHAS. A. BAILEY,
For Complainants.

72 In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Plaintiff, *vs.* AMERICAN ICE COMPANY *et als.*, Defendants. } No. 17259. In Equity.

Be it remembered that on this thirteenth day of November, 1896, personally appeared before me, Thomas W. Vose, a notary public in and for the city of Bangor and State of Maine, GEORGE B. CANNEY as witness for the plaintiff in the above-entitled cause, Eastern Trust and Banking Company, plaintiff, *vs.* American Ice Company *et als.*, defendants; Charles A. Bailey, of counsel for the plaintiff, and William G. Johnson, counsel for the defendants Willis and The American Ice Company, and the said witness, being first duly sworn, did depose and say, in response to the direct and cross interrogatories to him propounded by the said counsel, as follows:

Direct examination:

Q. Give your name and residence. A. George B. Canney; Bangor, Maine; secretary Eastern Trust and Banking Company.

Q. Mr. Canney, you have knowledge of the deed of trust which the Eastern Trust & Banking Company holds in favor of
73 the bondholders of the American Ice Company? A. I have.

Q. What was the amount of bonds that was originally issued, if you know? A. $40,000.

Q. Do you know what amount of them have been paid? A. There have been five thousand paid.

Q. What amount are outstanding now? A. Thirty-five thousand.

Q. Do you know in whose hands those bonds now are? A. Well, I have no personal knowledge where they are. We have a record or a statement made that accounts for some over thirty-three thousand, I think.

Q. Whether any steps have been made to sell the real estate under the mortgage power contained in the mortgage? A. Yes; steps were taken and the real estate of both properties was sold.

Q. Now, can you state what was done in relation to the sale of that property—steps were taken in regard to the sale of it? A. Well, the sale was—notice of the sale was published in two papers here and two papers in Washington. I think some three or four weeks before the first sale was made notice was published—the first

attempted sale was made. I have not the data; it was made some time, I think, in the summer of '94. The first sale was adjourned. I think the second sale was adjourned. Finally a sale was made in the fall, I think, of '94; the properties were sold; they were put up separately and sold, and the committee appointed by the bond-
holders to represent them purchased the two properties, pay-
74 ing $14,500 for the Penobscot River property and $14,000 for the Washington property. There has been no transfer of title made yet.

Q. Now, in regard to the Washington property, what, if any, understanding or agreement was made in regard to the possession of the property with the purchasers by the Eastern Trust & Banking Company? A. I think we were instructed to take possession of the Washington property. We employed counsel in Washington and have taken all necessary steps, as advised, to get possession of the property.

Q. Whether the arrangement was that the Eastern Trust & Banking Company were to obtain possession of the property before any transfer of it should be made? A. Yes; that was the instructions.

Q. Whether the purchasers have since notified you that they rescind the sale? A. They have. We have a written notice to that effect, as far as the Washington property is concerned.

Q. Now, have you got a statement of the account of the company as trustee in the matter of the sale? A. I have.

Q. Have you drawn it off from the book so that you have it? A. I have; yes. I will file it with this deposition.

Q. Whether the account book in any case shows any charges of interest upon these various items which you are charged? A. No; I think not.

Q. Whether the account book shows any charge made for
75 the trustee's services in and about the property? A. No; it does not.

Q. Whether any amount has been determined upon by the trustee, to your knowledge, for that service as a charge to be made? A. There has.

Q. And what amount? A. Well, up to March, '95, there was a charge made, not on the books, but the amount determined upon, the amount of two thousand dollars, commissions and services up to date—up to that time.

Q. You speak of a charge up to date. The property was sold when? A. Well, my recollection it was sold in the fall—in the summer of '94.

Q. Then you speak of the amount having been determined upon. Did that mean, up to the date of the sale, the charge of $2,000? A. That came about this way: Mr. Wilson, who represented the bondholders in the matter, asked me one day what our—he asked us some time, I think, in March, 95, what our commissions and charges were in the business—he was asking for information of the bondholders—and I told him, at the suggestion of our president—I told him that it was $2,000. So I fix the date that way.

Q. In regard to this sale, did you yourself personally have to do with this matter, Mr. Canney? A. I did; I arranged for it.

Q. Under your supervision and direction? A. It was.

76 Q. Whether this movement to foreclose the mortgage was the voluntary action of the Eastern Trust & Banking Company, or were you requested by the bondholders to proceed to sell the property? A. We were requested by the bondholders.

Q. In what form did that request come to you? A. A written request.

Q. Have you that request? A. I have.

Q. And where is it? A. I have it among my papers.

Q. Can you produce it here so that we can see it? Do you know, Mr. Canney, how many of those bonds had been defaulted before this sale was made? A. The interest was defaulted on all of them. I haven't a personal recollection of how many of the bonds themselves were due at the time of the sale. I think perhaps I could find a record of them somewhere; but the interest was defaulted on the whole issue of the thirty-five thousand of the remaining bonds unpaid at the time of the sale.

Q. And were there some of the bonds on which the principal was due before this sale? A. Well, as I say, I don't recollect. I think there was; but I think there is some record somewhere that will show.

Cross-examination:

Q. Mr. Canney, were you present at the sale of the real estate? A. I was.

77 Q. It was an auction sale? A. It was an auction sale.

Q. Do you remember who this committee of bondholders was? A. I have a record of them.

Q. Can you mention the names of them or any of them? A. Yes; Mr. John B. Huckins, of Boston; Mr. John Miller, of Washington; Edward L. Stewart, of Bangor.

Q. Have you among your papers a copy of the advertisement under which the sale took place? A. Yes.

Q. Will you please file it with the deposition? A. Yes.

Q. I will ask you to state, if you can, what the terms of sale were as announced at the sale. A. Well, I have them all here in this document.

Q. What is that paper? A. This is instructions to auctioneer from committee of the bondholders, instructing the auctioneer how to proceed in the sale of the property.

Q. Did he proceed in accordance with their instructions? A. He did.

Q. Well, will you please file those with your deposition? A. I will. This sale was adjourned from time to time. That is a copy of the instructions at the first sale.

Q. I referred to the instructions under which the auctioneer proceeded at the actual sale. A. Well, I don't know as I have

78 the written instructions at the actual sale; yes; I have the instructions to us from the committee of the bondholders how to sell the property at the last sale.

Q. These are the instructions under which the sale was made (showing witness Complainant's Exhibit 1)? A. Yes, sir.

Q. Were the terms and requirements suggested in this paper—Complainant's Exhibit 1—carried out at the actual crying of the sale? A. They were. I think that paper was read by the auctioneer before he finished the sale.

Q. Can you state—have you any recollection as to how many bidders there were for the Washington property? A. No; I don't think there were over three or four bidders for both properties?

Q. Do you know who they were? A. No; I haven't any recollection.

Q. Do you know anything about the bids? A. I do not.

Q. Don't recollect anything about it? A. I think Mr. Miller bid on behalf of the bondholders; did the actual bidding. He was one of the committee. I think he did the actual bidding, my recollection is.

Q. Do you know that there were any other actual *bona fide* bids except his? A. My recollection is that there was one.

Q. For the Washington property? A. Well, I couldn't say whether it was for the Washington property or for both properties.

79 Q. You can't recall, I suppose, how much it was? A. I can't.

Q. Now, when the sale was closed, the property was struck off to the bidder, was it? A. It was.

Q. By the auctioneer? A. Yes.

Q. What sum of money was paid then? A. It was a cash sale. As I say, there has been no transfer of title; there has been no payment made yet.

Q. Was any money paid at all? A. Not that I know of.

Q. Well, was any money paid to the Eastern Trust & Banking Company? A. No, sir.

Q. On account of either property? A. No, sir.

Q. And has the Eastern Trust & Banking Company made any deed of either property to the purchaser? A. No, sir; they have not.

Q. Who has possession of the property now? A. Well, we are looking after it as trustee yet. At the suggestion and requirement of the committee of the bondholders we are paying insurance as it comes round and pay the taxes.

Q. Is the property on a rental or has it been since the sale? A. Yes; the Maine property is.

80 Q. How long has it been under rental? A. Well, it was rented in the fall or winter of '94.

Q. At what rate of rent? A. $2,400 a year.

Q. And who has been receiving that rent? A. We have—the trust company.

Q. Have they paid over any of that to the bondholders? A. They have not.

Q. Was there any other terms *od* sale for either property an-

nounced at the time of sale—other than the terms contained in the Complainant's Exhibit No. 1? A. No; there was not.

Q. Now, with reference to the charges and commissions claimed by the complainant, The Eastern Trust & Banking Company, is that for services in making the sale as trustee under the mortgage or for some other services or both? A. Well, there has been no direct charge made on the books of any kind as to how it should be divided. It would represent services as trustee.

Q. Well, I understood you to say that the president had authorized you to say that the company had determined to make a charge of $2,000? A. Yes.

Q. Now, what I desire to know is whether that $2,000 was for the services of the company in making this sale in the fall of '94 or whether it was for some other matter. A. It was for that and for previous services.

Q. Previous services to whom? A. To the American Ice Company.

Q. Well, can you state what those services were? A. Oh, general services. We paid insurance from time to time and, as I say, paid the taxes.

81 Q. That is, for cash disbursed; you claim that this company has disbursed cash on account of this property? A. Not the $2,000; no, sir.

Q. But cash has been disbursed? A. Oh, certainly.

Q. And the $2,000 was to cover these disbursements also? A. For services and work and commission; for anything that it will go in for.

Q. Any cash that the company has paid out on account of this property, either for insurance or taxes, I presume you have book entries of? A. That appears in the statement that I will make you.

Q. You have book entries of that? A. Yes, sir.

Q. But the company has never made any book entry of any charge for any services rendered either in the matter of sale or prior to the sale or since? A. No, sir.

Q. Is that lump sum of $2,000 a sum that the company had definitely determined to claim, or was it a mere suggestion? A. It was what they intended to put in claim for.

Q. And that claim they made against the proceeds of the sale of the real estate, do they? A. Well, against anything that they could get. It came about this way: Mr. Woodard, representing the bondholders, asked us what our charges were, and we told him up to the time that he made the inquiry. I can give you just that date if you would like it; I have got it down here. There will be charges

82 since then. $2,000 was for commissions to the date of the sale.

Q. Can't you state commissions on what? A. I can't definitely. That is the amount that I stated to Mr. Woodard, attorney for the bondholders, March 1st, 1895.

Q. Is that a claim that the company makes under the terms of the mortgage, or simply a claim that it makes generally for services?

A. We were entitled to reasonable compensation, I think, in a mortgage, for our services as trustees.

Q. I understand, but I want to know whether this claim is made under the authority of the mortgage or is it for matters outside of the mortgage? A. Why, it all comes under the mortgage, as I look at it.

Q. Did you state that date? A. Services as trustee to March 1st, 1895. Now that would include our services at the time of the sale and up to the sale—services as trustees.

Q. And does the complainant company, The Eastern Trust & Banking Company, make any claim for any services since that time? A. We shall.

Redirect examination:

Q. I don't know as you have left it entirely clear; the $2,000 which you claim does not include any disbursements? A. It is for compensation, commission, services; I don't know which way
83 we shall put the claim in, but it doesn't include any disbursements of cash.

Recross-examination:

Q. So that any claim that you may have for cash disbursed on account either of insurance or taxes or any other matter would be in addition to that $2,000? A. It would.

GEO. B. CANNEY.

And I hereby certify that the said deposition of the said witness was then and there taken down stenographically and afterwards read over to the said witness, and by him signed in accordance with the annexed stipulation of counsel. I further certify that I am not of counsel for any of the parties in this litigation, and am not interested in the proceeding, and that my fee for taking the said deposition, amounting to five dollars, has been paid by the plaintiff.

[SEAL.] THOMAS W. VOSE,
Notary Public.

Transcript of Entries from Cash Book of Eastern Trust & Banking Co. of Bangor, Me., in Account with American Ice Co. of Washington, D. C.

Page 323. Under date of March 22, 1894.

American Ice Co. Foreclosure Account Expenses.

To taxes town of Hampden, 1893	$317.90	
To insurance of houses Royal J. H. B. & Co....	32.50	
North Ame. D. M. H. & Son.....	81.25	
Atlas W. F. C.....	93	
		$524.65

84 Page 328. Under date of March 28, 1894.

American Ice Co. Foreclosure Account.

To G. B. Canney, sect'y, expenses to Washington.	$80	
" Edwards & Barnard, examination of mortgage and opinion	25	
		$105.00

Page 329. Under date of March 29, 1894.

American Ice Co. Foreclosure Account.

To insurance on houses, Imperial	$33.25	
Hanover	48.75 / 24.37	73.12
Springfield		24.37
Hume		61.50
Springfield		27
Fire Asso		65
State of Penn		65
		$349.24

Page 378. Under date of May 8, 1894.

American Ice Co. Foreclosure Account.

To adv't sale, Washington Post	$81.90	
" " Daily News	13.33	
" "	10	
		$105.23

Page 379. Under date of May 9, 1894.

American Ice Co. Foreclosure Account.

To C. Pearl, auctioneer	$15	
Room at Bangor house	1	
		$16.00

85 Page 385. Under date of May 14, 1894.

American Ice Co. Foreclosure Account.

To adv't Washington Star	$83.98	

Page 418. Under date of June 8, 1894.

American Ice Co. Foreclosure Account.

Boutelle & Burr, adv't	$1.75	
C. S. Peare, auctioneer	15	
Room, for sale, at Bangor house	1	
		$17.75

Page 433. Under date of June 19, 1894.

American Ice Co. Foreclosure Account.

To paid Washington Post, notice adjourned sale.. ..... $9.90

Page 479. Under date of June 30, 1894.

American Ice Co. Foreclosure Account.

To Edwards & Barnard, legal service to date..... $25

New cash book, pages not numbered.

Under date of Sept. 29th, 1894, to adv't sale..... $3.50

Under date of Dec. 6, 1894.

American Ice Co. Foreclosure Account.

Taxes, 1894..... .... $226.80

Under date of Dec. 28, 1894.

American Ice Co. Foreclosure Account.

Expenses Receiver & Co..... ..... $1,051.42

86 Under date of Feb'y 13, 1895.

American Ice Co. Foreclosure Account.

C. S. Pearl, commissioner, sale Sept. 8... .... $25.00

Under date of Nov. 8, 1895.

American Ice Co. Foreclosure Account.

Davis & Bailey..... .... $50.00

DR.

Page 379. Under date of May 9, 1894.

American Ice Co. Foreclosure Account.

By error in charging insurance..... .... $17.38

True copies of entries from cash book.
Attest: GEO. B. CANNEY, *Sec'y.*

Trustee's Sale of the Real Estate of the American Ice Company.

Whereas the American Ice Company, a corporation existing by virtue of the laws of the State of Maine, having a place of business in Bangor, in the county of Penobscot, in said State, and in Washington, in the District of Columbia, did on the 2d day of December, 1889, make, execute, and deliver unto the Eastern Trust and Banking Com-

pany of Bangor, Me., as trustee, a mortgage deed of all and singular its real estate, as described below, for the purpose of securing the payment of the interest and principal of certain bonds issued by said American Ice Company, as set forth in said mortgage
87 deed of trust, originally amounting to the principal sum of $40,000, which deed of trust is recorded in Liber 1439, folio 417, one of the land records of the District of Columbia, and the conditions of such mortgage deed of trust having been broken by said American Ice Company, and by reason of such breach of condition the holders of the bonds secured by said Eastern Trust and Banking Company, as trustee, should forthwith enforce the rights of the bondholders under said mortgage deed of trust and foreclose upon and sell said real estate according to the conditions of said deed:

Now, therefore, the Eastern Trust and Banking Company, trustee, as aforesaid, will sell at public auction, at the Bangor house, in said city of Bangor, on the 9th day of May, 1894, at 10 o'clock a. m., the following-described real estate, to wit:

Two certain lots or parcels of land in Hampden, in the county of Penobscot, aforesaid, bounded and described as follows:

That portion of the Cyrus Emery farm which lies between the Penobscot river and the new county road, being all of said farm lying east of said road, and containing thirty (30) acres, more or less, and being the same premises conveyed by the trustees of said Cyrus Emery's estate by said deed recorded in Penobscot registry of deeds, volume 502, page 288; to which deed, as well as to a deed from Augustus J. Emery, recorded in said registry of deeds, volume 530, page 98, reference is hereby had.

A lot formerly a part of the homestead of John Hardin, described and bounded as follows, viz: Beginning at a stake on the
88 dividing line between land of said Harden and land formerly of the heirs of Cyrus Emery, thence at right angles with said dividing line twelve and one-half rods, more or less, to the dividing line between land of said Harden and land of Doddwell; thence on said dividing line to the Penobscot river; thence down said river to said dividing line between land of said Harden and land formerly of the heirs of Cyrus Emery; thence on said Emery's line to the place of beginning, together with all the buildings and fixtures on the two said above-described parcels of land, being the same premises conveyed by the Penobscot River Ice Company to said American Ice Company by deed dated June 10, 1889, and recorded in the Penobscot registry of deeds, Book 593, page 449.

Also all that piece or parcel of land, with the improvements thereon, lying in the city of Washington, in the District of Columbia, and being opposite square 270, in said city and District, commencing for the same at the southeast corner of square number two hundred and seventy, running thence southerly with the west line of Thirteenth street to the channel of the Potomac river; thence westerly with the west line — -nel to a point opposite the southwest corner of square number two hundred and seventy; thence due north to the said southwest corner of said square number two hundred and seventy, following the eastern line of what is alleged

to be Thirteen-and-a-half street; thence with the southern line of said square two hundred and seventy two hundred and fifty-five feet one inch, to the place of beginning, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all
89 the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim and demand, either at law or in equity, or otherwise however, of the said parties of the first part of, in, to, or out of the said piece or parcel of ground and premises, being the same premises conveyed by E. M. Willis and another to said American Ice Company by indenture dated December 2, 1889, and recorded in land records of the District of Columbia, Book 1445, page 16—

Together with all the rights and easements, appurtenant-, privileges, or options in the matters of wharfing or other riparian rights of any kind whatsoever which may have been acquired by said American Ice Company by virtue of the covenants and agreements in said deed of said Willis *et al.* con'ained.

The terms and conditions of said sale will be announced by said trustee at the time and place of the auction sale.

The trustee will reserve the right to adjourn such sale or sales under the authority conferred by said deed of trust.

EASTERN TRUST AND BANKING COMPANY, *Trustee*,
By GEO. B. CANNEY,
Secretary, Bangor, Me.

Ap. 7, 14, 21, 28.

By Duncanson Bros., auctioneers.

Adjourned Trustee's Sale.

Notice is hereby given that the sale of the property of the American Ice Company, heretofore advertised to occur on the 9th
90 day of May, 1894, was adjourned to Friday, the 8th day of June, A. D. 1894, at 11 o'clock in the forenoon, at the Bangor house, in Bangor, Me., at which time and place the Eastern Trust and Banking Company, as trustee for the bondholders, will sell at public auction, to the highest bidder, the property of said ice company. The property consists of land, wharves, ice-houses, and elevators in Hampden, Me., on the Penobscot river, and wharf property and ice-houses situated thereon in Washington, D. C.

EASTERN TRUST AND BANKING COMPANY, *Trustee*,
By GEO. B. CANNEY, *Secretary.*

Trustee's Sale of Valuable Wharf Property Occupied by the American Ice Company.

This is to give notice that the undersigned, as trustee, will, on Saturday, September eighth, 1894, at ten o'clock a. m., at the Bangor house, in the city of Bangor, State of Maine, sell, at public

auction, all that parcel of land in the city of Washington, in the District of Columbia, with improvements thereon, and the privileges thereto appertaining, being opposite square two hundred and seventy (270), and described as follows: Commencing at the southeast corner of said square; thence southerly with the west line of 13th street to the channel of the Potomac river; thence westerly with said channel to a point opposite the southwest corner of said square, following the eastern line of what is alleged to be 13th street; thence with the southern line of said square 255 feet 1 inch to the beginning. This sale will be made by virtue of the powers vested in said trustee by a certain mortgage deed of trust
91 recorded in Liber 1439, folio 417, one of the land records of the District of Columbia, and is a postponement or adjournment of the sale heretofore advertised to take place May 9, 1894, at the same time and place.

Terms of sale will be announced at said auction sale.

EASTERN TRUST AND BANKING CO., *Trustee*,
By B. F. LEIGHTON, *Its Attorney*, 452 *D St.*

COMPLAINANT'S EXHIBIT 1.

To the Eastern Trust & Banking Company:

The undersigned, a committee representing nearly all the holders of the bonds secured by the mortgage of the American Ice Company on property in Washington, D. C., and in Hampden, county of Penobscot, State of Maine, at the sale of said property to be held this day by said Trust Co. under the mortgage from said American Ice Co. to said Trust Co., hereby request that the property in Washington and the property in Hampden be put up separately, the Washington property to be put up first, and that the auctioneer announce as the terms of sale that one-third of the purchase-money is to be paid in cash, one-third in one year, with interest, and one-third in two years, with interest, interest to be payable semi-annually, the payments in one and two years to be secured by mortgages upon the property sold, with proper provisions in said mortgages to ensure the prompt payment of taxes on the said property, and that the buildings on said property shall be kept covered by insurance to at least the amount due and secured by the mortgages, loss, if
92 any, to be payable to the mortgagee to the extent of his interest, and that the buildings be kept in suitable state of repair.

Bangor, September 8th, 1894.

EDWARD L. STEWART.
J. B. HUCKINS.
JOHN MILLER.

Testimony of One Witness for the Complainant.

Filed April 29, 1897.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY
vs.
AMERICAN ICE COMPANY *et al.*
} Equity. No. 17259.

Be it remembered that at an examination of witnesses, begun and held pursuant to notice, on the 27th day of March, 1897, at which said examination there were present Benjamin F. Leighton, Esq., solicitor for the complainant, and William G. Johnson, Esq., solicitor for the defendants, personally appeared before me, J. Arthur Lynham, an examiner in chancery of said court, the within-named witness, who, being called for and on behalf of the complainant and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in the above-entitled cause, did depose and say what is hereinafter set out as stated by him.

J. ARTHUR LYNHAM, *Examiner.*

93 In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING CO.
vs.
AMERICAN ICE COMPANY *et al.*
} Equity. No. 17259.

WASHINGTON, D. C., *March 27th*, 1897,
SATURDAY, at 2 o'clock p. m.

Met, pursuant to notice to the solicitors for the defendants, to take testimony on the part of the complainant in the above-entitled cause.

Present: Benjamin F. Leighton, Esq., solicitor for the complainant, and William G. Johnson, Esq., of solicitors for the defendants.

Whereupon—

NOTE.—It is hereby stipulated and agreed by and between the solicitors for the respective parties that the following certificates of publication may be offered in evidence in lieu of more formal proof of the several advertisements of the sale in complainant's bill described and of the adjourned notices of such sale.

(And the same are filed by the examiner, marked Exhibits J. A. L. Nos. 1, 2, 3, 4, 5, 6, 7, and 8 respectively.)

Mr. LEIGHTON: I want to offer in evidence a stipulation entitled in this cause and signed by the respective counsel to it.

94 (And the same is filed by the examiner, marked Exhibit J. A. L. No. 9.)

Mr. LEIGHTON: I also desire to file this further stipulation entitled in this cause and signed by the respective counsel to it.

(And the same is filed by the examiner, marked Exhibit J. A. L. No. 10.)

Thereupon JOHN MILLER, a witness of competent age, produced on the part of the complainant and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. LEIGHTON:

Q. Mr. Miller, what is your business? A. My business is coal and brick manufacturing.

Q. Have you any interest in the American Ice Company? A. Bonds?

Q. Yes. A. Yes, sir.

Q. To what extent? A. Nine thousand eight hundred dollars ($9,800) worth of them.

Q. Do you still own them? A. Yes, sir.

Q. Were you present in Bangor at a sale of the property embraced in the deed of trust in these proceedings described, which
95 took place in May of 1894? A. I went to Bangor to attend the sale in May, 1894, and they postponed it.

Q. Where was the sale to have taken place? A. At the Bangor house.

Q. Were you present at the Bangor house at the time for which the notice was given to take place? A. Yes, sir.

Q. How many persons were there at the time of that sale? A. Oh, I suppose twenty-five (25) or thirty (30).

Q. Where was the property offered? A. Offered for sale in the parlors of the Bangor house.

Q. By whom? A. By the auctioneer and the representatives of the Eastern Trust and Banking Company.

Q. Were there any bids at that time? A. Well, there was no bid over ten thousand dollars ($10,000).

Q. Were there any bidders present? A. Yes; there were some in there that bid on the property; not enough, though, so as we could sell it.

Q. Why was the property not sold at that time? A. Because there was not as much money offered as we thought it was worth.

Q. How were the properties put up? A. The property in Washington and the property in Bangor were put up separate.

96 Q. To what time was the sale postponed? A. It was postponed, I think, from May until June. One month, I think.

Q. What as to the notice of the postponement of the time at which the property was to be subsequently offered? A. They stated that the sale would be adjourned or postponed, I don't remember which, for one month, to take place at the same place.

Q. Were you there at the adjournment in June? A. Yes, sir.

Q. What took place at that time? A. Well, they did not get sufficient money offered in June, and then they postponed it, I

think, until September, 1891 or '2. I am not positive about the date, but it was in September.

Q. Where did the sale take place at the second offering? A. At the Bangor house.

Q. Same house and same place? A. Yes, sir.

Q. How many persons were present at that sale? A. I think there were probably thirty (30) or more.

Q. Any bids? A. Yes, sir.

Q. How many? A. Oh, there was a dozen bids, I think.

Q. What was the best offer bidden at that cry? A. The
97 best offer—that is, under the bondholders' offer—was thirteen thousand ($13,000) or thirteen thousand five hundred ($13,500), I am not positive which. That was bid, I think, by the Knickerbocker Ice Company of Philadelphia. They had a representative there and we bid it in at fourteen thousand dollars ($14,000).

Q. At the June sale? A. Oh, no; this is the September sale.

Q. I am speaking of the June sale. A. At the June sale we didn't have any offer over ten thousand dollars ($10,000).

Q. Well, that was the sale I was speaking of. How many persons were present at the June offering? Does the evidence which you have just given apply to the offering which took place in June or September? A. About a dozen or more applies to June.

Q. There were about a dozen in June? A. Yes, sir; or more.

Q. Were there any bids at the June offering? A. None that we would consider at all; nothing over ten thousand dollars ($10,000).

Q. What effort was made at the time to make a sale? A. Well, we notified the different ice companies all over the country that we thought would be apt to buy the property—people that would buy the property in New York and people that sell the ice in Philadelphia, and the people here in Washington.

Q. In what way? A. We notified them through the paper, and also sent them a notice of it.

98 Q. When did the next sale take place or next offering? A. Well, this is the last one, you know. That was in September.

Q. Was any notice of the date of the September sale given at the time of the adjourned sale in June? A. When they adjourned the sale in June they adjourned the sale until September, either 1891 or '2, I am not positive which, to take place at the Bangor house, Bangor, Maine.

Q. Were you present at that sale? A. Yes, sir.

Q. Where did it take place? A. In the Bangor house.

Q. How many persons were present? A. Something over thirty (30); between thirty (30) and forty (40), I should judge.

Q. How many bids were made at that sale? A. About a dozen; twelve or more.

Q. Was the property finally struck off? A. Yes, sir.

Q. Do you recollect at what price? A. Fourteen thousand dollars ($14,000).

Q. Which property are you speaking of now? A. The property near Bangor.

Q. How were the properties offered? A. Separate.

Q. Do you recollect what the Washington property brought? A. I think it was fourteen thousand seven hundred and fifty dollars ($14,750).

99 Q. Were there any bidders at the last sale in September from out of town that you know of? A. Yes, sir.

Q. Who? A. Well, there were some people there from Philadelphia; some from New York; some from some place in Maine, between Portland and Bangor; I don't know the name of the place; and then there were some Bangor builders there. The highest and best bid that we got was either thirteen thousand ($13,000) or thirteen thousand five hundred ($13,500), except the one that the bondholders put in of fourteen thousand ($14,000). I bid fourteen thousand ($14,000) for the bondholders.

Q. Of this last sale was there any special notice given, do you know, to the public? A. Notice through the papers, and the people in Washington here I notified myself.

Q. The people generally, or a special class of people who would be likely to purchase? A. We notified the ice companies here. I went around to see them, and saw Mr. Church, of the Independent, and Mr. Bartlett, of the Great Falls, and Mr. Yerkes, of the Independent.

Q. Do you know whether or not Mr. Willis, the defendant in this case, had knowledge of these offerings? A. It was in the newspaper here. I presume that he had knowledge of them. In fact, I know that he had knowledge of it, because he and I talked it over prior to sale.

Q. Prior to the sale? A. Yes, sir.

100 Q. Has there been any settlement of this last sale—that is, the September sale—has there been a transfer of the title and settlement of the sale of the property in Bangor? A. There has.

Q. State what it was. A. Why, the property was sold at private sale to the consolidated ice companies of New York for sixteen thousand five hundred dollars ($16,500), and after paying the expenses out, insurance and taxes, taking care of the property, and sundry expenses, there was a balance left of nearly fourteen thousand dollars ($14,000).

Q. Gave you what per cent. of your bonds? A. Thirty-nine (39) per cent.

Q. Has the balance been paid in any manner? A. No, sir.

Q. Thirty-nine (39) per cent., then, is the net proceeds of the last sale that was made by the committee of the bondholders? A. Yes, sir.

Q. What about the Washington property? A. The Washington property—why, the assignee of the American Ice Company would not give us possession and we would not close the sale until the trust company would give us possession.

Q. What is the situation of that sale as to the property situated

here? A. The situation is, I believe, that the assignee of
101 the American Ice Company is holding the property until this suit is settled.

Q. Has there been any transfer of the title by the Eastern Trust and Banking Company to the committee of the bondholders of the property situated here? A. The property was transferred by deed jointly from the Eastern Trust and Banking Company to the committee of the bondholders that bought it in.

Q. You refer to the property situated in Maine? A. Yes, sir.

Q. I refer to the property situated in Washington. A. Well, there has been no transfer of this property in Washington, and no deed has been given for it.

Q. Well, what is the situation there; who was this committee of bondholders that acted on behalf of the bondholders? A. Mr. E. L. Stewart, of Bangor, Maine, and John B. Hickins, of Boston, Massachusetts, and myself were appointed a committee of the bondholders by the bondholders at a meeting they held in Bangor in September, 1894.

Q. Do the bondholders still claim any interest in the sale that was made in September of the Washington end of the property, or has that been receded from? A. They still claim that they have the right to have that property at their bid—the Washington property at their bid.

Q. At the bid that was made for it? A. Yes, sir; in
102 Bangor.

Q. Has there or has there not been any decision of that sale by the committee of the bondholders to the purchasers? A. Well, I don't know how that would be.

Mr. JOHNSON: Well, I object to that question. It calls for the witness' conclusion about some matters of fact or law, both.

A. (Continuing:) The state of the case is, of course, that they bought it in at auction, and the trust company has never been able to deliver it to them, because they didn't have possession of it.

Q. What were the terms of the sale as to the Washington end of the property—what was the condition under which the bid was made for that property? A. The terms of sale were that they were to give us possession, or that the parties that bought it were to be put in possession.

Q. Have you given any notice to the trust company that you declined to complete that purchase? A. No, sir; not that I know of.

Cross-examination.

By Mr. JOHNSON:

Q. Mr. Miller, do you know how far Bangor is from Washington? A. I don't know exactly how far it is, but I think it is about four (4) or five hundred (500) miles—five hundred (500) miles, probably; or six hundred (600).

103 Q. Is not all the property involved in this deed of trust

situated in Bangor? A. It is situated just outside of Bangor and in Washington, D. C.

Q. I say is not all of it situated in Bangor? A. No, sir; it is not. It is just on the outskirts of Bangor and also in Washington.

Q. In a place called Hampton, ain't it? A. In a county called Hampton. I have never been to Hampton. I have been on this property, though, and have also been to Bangor several times—the electric car road down there—just outside. I thought it was right in the outskirts of Bangor.

Q. Now, there were several offers for these two properties—the property in Maine and the property in Washington—but there was no sale made until September, you say? A. No, sir.

Q. Who conducted the several offers of sale? A. The auctioneer there, at Bangor.

Q. Well, for whom? A. For the Eastern Trust and Banking Company.

Q. The complainant in this suit? A. Well, yes, sir.

Q. And the trustee under the deed of trust? A. Certainly.

Q. They withdrew the property at these previous offers? A. Yes, sir.

Q. And at the September sale they made a final sale of it? A. Yes, sir.

Q. Now, you say

104 Q. Now, you say that they sold the Maine property first? A. Well, I don't know. I could not say which property they put up first—whether it was the Washington property or the Bangor property.

Q. Well, they offered them separately, at all events? A. Yes, sir.

Q. They were not offered together? A. Yes; they were offered together, too; offered together and offered separately.

Q. Which way were they sold? A. They were sold separately.

Q. Well, were they sold separately under the joint offering or the separate offering? A. They were sold under the separate offering. They could not get any bid by putting them up together, and so they separated them and sold the Bangor property for fourteen thousand dollars ($14,000), and the Washington property for fourteen thousand seven hundred and fifty dollars ($14,750).

Q. Now, do you know who purchased the Maine property? A. Yes, sir.

Q. Who? A. I bid it in for the boudholders, as one of the committee.

Q. In whose name was it struck off? A. Why, it was struck off, I think, in the name of the committee—John B. Huckins, E. L. Stewart, and John Miller.

105 Q. Do you remember who the auctioneer was? A. I don't know his name, Mr. Johnson.

Q. Now, how much money did Mr. Huckins, Mr. Stewart, and yourself, or either of you, pay for the Maine property? A. Fourteen thousand dollars ($14,000).

Q. In cash? A. No, sir.

Q. How did you pay it? A. They have got our bonds.

Q. Well, my question is, What, if anything, you paid? A. We didn't pay any cash money at all.

Q. Did you give any notes? A. No, sir.

Q. Did you give anything at all? A. Nothing but our bonds.

Q. Did you give up any bonds? A. Yes, sir.

Q. When? A. Why, when they asked for them.

Q. Well, when was that? A. Well, they didn't ask for my bonds until—well, about two weeks ago, when they were going to make a dividend.

Q. They asked for some bonds from you two or three weeks ago? A. Probably a month ago.

Q. How many bonds did they ask for? A. Asked for all that I had.

Q. Who is it that asked for them? A. The Eastern Trust and Banking Company.

106 Q. Did you turn them over? A. I did.

Q. Nine thousand and eight hundred dollars ($9,800.00)? A. Yes, sir.

Q. And have they been cancelled? A. Yes, sir; the bonds came back to me with a stamp on their face, "thirty-nine (39) per cent. dividend paid on this bond," and a check for thirty-eight hundred and twenty-two dollars ($3,822.00), with a letter stating that they were——

Q. Well, never mind the statements of the letter. Now, that is all that you personally know about anything in connection with the advertisement and the sale of the Maine property? A. That is all that I know.

Q. That some time within the last thirty (30) days you sent your bonds to the Eastern Trust and Banking Company at their request? A. I took them there and left them there, and they made the dividend and sent the bonds.

Q. And they made the indorsement on them that thirty-nine (39) per cent. of them had been paid, and sent you a check for thirty-eight hundred and twenty-two dollars ($3,822.00)? A. Yes, sir; I think that was the amount.

Q. Now, how much did you or either of those other two gentlemen, at the time of the September sale, pay for the Washington property? A. Why, I didn't pay any cash.

107 Q. Did Mr. Huckins? A. I don't know. I don't know whether he did or not.

Q. Did Mr. Stewart? A. I don't know whether he did or not.

Q. You didn't see either of them pay anything? A. No; I didn't see either of them pay anything.

Q. Did the Eastern Trust and Banking Company ever make any deed to you or to Mr. Huckins or to Mr. Stewart for the property in Maine? A. They made a deed to the Consolidated Ice Company.

Q. I didn't ask you that. I asked you if they ever made any deed to you or to Mr. Huckins or to Mr. Stewart? A. None except

the deed that they made when they sold the property to the consolidated ice companies. None that I know of.

Q. Did they ever make any deed conveying the property to you? A. No.

Q. Did they ever make any deed conveying it to Mr. Huckins, that you know of? A. Not that I know of.

Q. Did they ever make any deed conveying it to Mr. Stewart, that you know of? A. Not that I know of.

Q. Now, from the sale in September up to the present time, did you personally ever have possession of the real estate in Maine? A. Mr. Stewart——

108 Q. Mr. Miller, my question is a simple one. Did you, from the time of the sale in September up to the present time, ever personally have possession of the Maine property? A. Personally I did not; but Mr. Stewart, as one of the three of the committee, had a watchman on the property from the time it was sold until it was leased.

Q. Now, who is Mr. Stewart? A. He is a gentleman that lives in Bangor, Maine.

Q. What position does he occupy with reference to the Eastern Trust and Banking Company? A. I don't know that he occupies any position.

Q. Is he not a stockholder and an official of that company? A. He is not.

Q. Are you quite sure of that? A. Not to my knowledge. I don't know who is a stockholder and who is an official of it.

Q. Are you sure that he is not a stockholder? A. Not to my knowledge.

Q. You would say that he was not? A. I understood when I was in Bangor that he was not.

Q. Do you know where his office is? A. Yes, I do.

Q. Where is it? A. It is in Bangor.

Q. Do you know whereabouts in Bangor? A. I don't know the street. It is way down the lower end of the street in Bangor.

Q. What business is he in? A. In the ice and commission business.

109 Q. Now, you say he had a watchman on this property. *Q.* He had a watchman. He was there from the time it was sold in December until we leased it.

Q. That is what he told you? A. That is what the watchman's bill calls for.

Q. You don't know anything about it personally? A. No; only what I have been told and what he wrote me.

Q. Then, personally, you don't know anything about that? A. No; but as cotrustee he wrote me that he had the watchman on there, and sent me the bill to approve for his services.

Q. And for how long a time was that? A. From September until the time the property was leased.

Q. When was it leased? A. I think probably about January.

Q. January following September? A. Yes, sir; some five (5)

months I think the man's time called for, or something like that. It was leased, I guess, before Christmas.

Q. Now, who got the rent for the property after it was leased? A. The rent was paid in to the Eastern Trust and Banking Company for the benefit of the bondholders or the parties who purchased it.

Q. Did you get that money? A. No, sir; I did not.

110 Q. Did Mr. Huckins? A. No, sir.

Q. Did you ever get any deed from the Eastern Trust and Banking Company conveying the Washington property to you? A. No, sir; we did not.

Q. Do you know of any deed having been executed by the company conveying it to Mr. Huckins or to Mr. Stewart? A. I do not.

Q. And you have never had possession of that property? A. No, sir.

Q. And have your yourself ever received any income from it? A. From the Washington property?

Q. Yes. A. No, sir; I would like to, though.

Q. Now, you stated that the Washington property was sold to Mr. Huckins and Mr. Stewart and yourself? A. Yes, sir.

Q. How were the terms of that sale announced? A. They were announced by the auctioneer when he put up the property.

Q. Were there any different terms announced at the time of the sale to you from what was announced to purchasers and bidders generally—did you have any special terms made for you by the auctioneer? A. Well, I can't say about that, Mr. Johnson. When we had the bid of thirteen thousand five hundred dollars

111 ($13,500) offered, the committee of the bondholders went out and consulted with the officials of the Eastern Trust and Banking Company and their lawyers, and we decided to make a bid of fourteen thousand dollars ($14,000), and unless we got more than that we would not let the property go to any one outside of the bondholders.

Q. Now, do you remember that the auctioneer announced his terms of sale by reading from a paper—a written paper of the terms of the sale? A. I presume that he did.

Q. I mean, don't you recollect that he did? A. I think he did. It has been three or four years since that thing happened, and it is not fresh in mind.

Q. And the terms of sale announced were the same for all bidders? A. I think so.

Q. That is, you did not understand that it was offered to you on any different terms from the offer made to other bidders? A. No; I did not.

Q. And your bid was made on the same basis as everybody else's, so far as the announced terms were concerned? A. I presume it was.

Q. I mean so far as you knew about it? A. Certainly.

Q. You stated that the Consolidated Ice Company of New York had purchased the Maine property? A. Yes, sir.

Q. Were you present at the actual sale of the property
112 to the New York Ice Company? A. Yes, sir; I made the deal myself.

Q. Where was it made? A. Right in Bangor.

Q. In Bangor? A. Yes, sir.

Q. Now, when was that made? A. Why, some time within the last month.

Q. Have you any way of fixing the date? A. Well, let me see; it is within the last month, Mr. Johnson.

Q. Was it during March? A. Yes, sir.

Q. Some time during March? A. Some time during March.

Q. Was this indorsement on your bonds and the check after the sale to the Consolidated Ice Company of New York or before? A. Afterwards.

Q. After? A. Afterwards.

Q. Who paid the money for the property sold to the Consolidated Ice Company? A. Why, the Consolidated Ice Company paid four thousand dollars ($4,000) on the property before I went to Maine. I would not let them have it——

Q. Well, one minute. Then you say they paid four thou-
113 sand dollars ($4,000)? A. Deposit before I went to Maine.

Q. And after you went there you said you were present at the consummation of the sale? A. Yes, sir.

Q. Then twelve thousand dollars ($12,000) additional was paid? A. Twelve thousand five hundred dollars ($12,500) additional was paid.

Q. To whom was that paid? A. Paid to the Eastern Trust and Banking Company.

Q. Do you remember by whom? A. By a draft on New York attached to the deed. Some officer of the New York company was there. They had a representative there. I signed the deed, and Mr. Huckins signed the deed, and Mr. Stewart signed the deed, and we left it with the Eastern Trust and Banking Company to send to New York on Monday; that was on Saturday. The Eastern Trust and Banking Company and Mr. Field, the representative of the New York people, were dickering for the property, and they telegraphed me to come up there, and I went up and sold it for sixteen thousand five hundred dollars ($16,500), and got it for the property.

Q. What Mr. Field was that? A. Charles E. Field, that used to be with the American Ice Company.

Q. Used to be with the Eastern Trust and Banking Com-
114 pany, didn't he? A. He might have been a director in there; he is not a director now; I know that.

Q. Then, this sixteen thousand five hundred dollars ($16,500) was paid to the Eastern Trust and Banking Company? A. Yes, sir.

Q. By the Consolidated Ice Company of New York? A. Yes, sir.

Q. The sale to the Consolidated Ice Company of New York, I take it, was a private sale and not at auction? A. Yes; it was a private sale, made by the committee of the bondholders.

Q. Do you know of your own knowledge whether the Consolidated

Ice Company of New York has possession of the Maine property? A. Yes; they have possession of it.

Q. Do you know how soon they got possession? A. Yes, sir; they got possession of it when I was there.

Q. That is, during the present month? A. Yes, sir; and put ice in the houses, and got them full of ice, I guess, now.

Q. Did this sale to the Consolidated Ice Company of New York cover all the real estate in Maine formerly belonging to the American Ice Company? A. Yes, sir; all the real estate in Maine.

Q. Did it also include the tools and machinery belonging to
115 the ice-harvesting plant? A. It included all the machinery. The tools did not belong to the bondholders. We did not sell them.

Q. Do you know anything about them? A. They were sold, I think, by the receiver.

Q. You have no personal knowledge about that, have you? A. Only what they told me there.

Q. I say, you have not any personal knowledge about that? A. No.

Q. Except that you know that the tools were not included in the sale to the New York Ice Company? A. Yes, sir; I know they were not included in the sale.

Redirect examination.

By Mr. LEIGHTON:

Q. Mr. Miller, who rented the property in Maine after the purchase by the committee of the bondholders? A. The committee of the bondholders rented it; at least, they authorized the Eastern Trust and Banking Company to make the lease.

Q. The committee of the bondholders fixed the terms? A. Fixed the terms and fixed the price.

Q. In this settlement that was made with the bondholders, were the rents collected by the Eastern Trust and Banking Company accounted for? A. The Eastern Trust and Banking Company made a statement of the amount of rents that they had received and all the income they had received from the property to us;
116 showed us the bills—all the bills that they had paid against the property—and gave the property credit for the sixteen thousand five hundred dollars received from the Consolidated Ice Companies of New York and the forty-eight hundred dollars ($4,800) rent received from the Penobscot River Ice Company for the two years that they had it rented.

Recross-examination.

By Mr. JOHNSON:

Q. Mr. Miller, who was the tenant? A. The tenant was the Penobscot River Ice Company.

Q. Was that a Maine company? A. Yes, sir.

JOHN MILLER.

Subscribed before me this 24th day of April, 1897.
J. ARTHUR LYNHAM, *Examiner.*

117 I certify that the foregoing deposition (comprising 25 typewritten pages) was taken down by me in shorthand, as an examiner in chancery, from the statements when and as uttered by the deponent thereof; that the same was thereafter transcribed and reduced by me into print, and thereupon read and subscribed by the deponent in my presence.

I further certify that my fee of $15.63 for taking, certifying, and returning said deposition has been paid to me by the complainant, and that the same is just and reasonable.

And I further certify that I am not of counsel nor in anywise interested in this case.

J. ARTHUR LYNHAM,
Examiner in Chancery.

118 EXHIBIT J. A. L. No. 9—STIPULATION.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING CO., Complainant, *vs.* AMERICAN ICE CO. *et al.*, Defendants. } No. 17259. In Equity.

The complainant and the defendants in the above-entitled cause, by their respective counsel, hereby stipulate and agree as follows, to wit:

That the printed transcript of the record in the case known and styled as The Eastern Trust and Banking Company, appellant, *vs.* Edward M. Willis and Wm. G. Johnson, assignee, appellees, heretofore heard and determined in the Court of Appeals of the District of Columbia, which is filed with this stipulation and marked "Complainant's Exhibit No. 2," may be offered in evidence without objection or exception thereto in lieu of more formal proof, and with like effect as though such proof were adduced and offered in evidence, for the following purposes, to wit:

1st. In place of a duly certified copy of complainant's charter, to show the terms and provisions of said charter.

2d. In lieu of a duly certified copy of the mortgage sought to be foreclosed and described in complainant's bill, for all pur-
119 poses for which a duly certified copy of said mortgage would be admissible.

3d. In lieu of the production of the record in the cases of The Eastern Trust and Banking Company *vs.* Edward M. Willis and Wm. G. Johnson, assignee, to show the proceedings had and taken by complainant to recover possession of said property by virtue of said mortgage.

It is further stipulated and agreed that the said William G. Johnson, as assignee, will, at the proper time, account before the auditor, or as may be directed by the court, for the rents, issues, and profits

of the real estate in complainant's bill described received and collected by him in his character of assignee, as aforesaid.

It is admitted on the part and behalf of the defendants that the bonds described in said deed were executed and delivered unto the said Eastern Trust and Banking Company, as recited in said deed, and were by the said Eastern Trust and Banking Company delivered to the parties entitled thereto, as required by the terms and provisions of said deed; that said bonds were taken by the parties to whom they were delivered for value, in the regular course of business, before maturity, and are now owned and held by them, or by their assigns or legal representatives, except as to the first instalment thereof, which fell due in December, A. D. 1892, and was paid, together with the interest then accrued and due on all of said bonds. The next instalment of said bonded indebtedness, which became due in December, A. D. 1893, was not paid at maturity, nor was the interest then falling due paid, nor have either of said sums or any part of them been since paid or satisfied by the defendants to
120 this cause, or either of them. It is admitted, further, that said bonds have not been paid, unless by the alleged sale made by complainant in the attempted exercise of its power as trustee under the power in said deed of trust contained, the legal effect of which sale and whether the same operated as payment or not in respect to any of said bonds, and, if so, to what extent, are questions to be determined by the court, and in respect to which no admissions are made.

B. F. LEIGHTON,
Solicitor for Complainant.
CALDERON CARLISLE,
Solicitor for Defendants.

EXHIBIT J. A. L. NO. 10—STIPULATION AS TO PAYMENT OF AMOUNT OF INSURANCE POLICIES TO W. G. JOHNSON.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Complainant,
vs.
THE AMERICAN ICE COMPANY *et al.*, Defendants.
No. 17259. In Equity.

The complainant in the above-entitled cause and the defendants, The American Ice Company, Wm. G. Johnson, assignee, and Edward M. Willis, hereby mutually stipulate and agree as follows:

121 First. The complainant hereby agrees that the money due from the Corcoran Fire Insurance Company of the District of Columbia, the Lincoln Fire Insurance Company of the District of Columbia, and the Riggs Fire Insurance Company on account of the loss and destruction by fire of the property described in com-

plainant's bill, under certain policies issued by said companies unto the defendant William G. Johnson, assignee, shall be immediately paid unto the said Johnson, assignee, in accordance with the terms and provisions of said policies, and that it will immediately notify the said companies that it consents to such payment. The complainant is induced to withdraw its opposition to such payment because of the answers filed by said companies and the possible defenses that are suggested therein to enforcing the loss accruing under said policies and upon the understanding and agreement below entered into by the said defendant, William G. Johnson.

Second. And the said William G. Johnson, in consideration of the premises aforesaid, hereby stipulates and agrees that as soon as the said complainant notifies the said companies of its consent to the payment of the losses which have accrued upon said policies to him that he will immediately use his best endeavors to collect the same from said companies, and that the money when so collected he hereby agrees to hold in trust, to abide the event of this suit and the final order or decree of the court in the premises, and that he will pay the same to the complainant or its attorney of record upon the final determination of the court.

122 It is mutually understood and agreed that the payment of the moneys by the said companies to the said Johnson shall not in any way affect the rights of the parties in this cause thereto, but that the litigation shall continue until the final decree is had determining the rights of the parties to this cause to said moneys or funds.

In witness whereof said parties have hereunto signed their respective names.

EASTERN TRUST AND BANKING COMPANY,
By B. F. LEIGHTON, *Its Solicitor.*
WILLIAM G. JOHNSON,
Assignee of the American Ice Company,
By CALDERON CARLISLE, *Solicitor.*
WM. G. JOHNSON, *Assignee.*

Decree for Sale—B. F. Leighton and C. Carlisle, Trustees, to Sell.

Filed March 16, 1898.

In the Supreme Court of the District of Columbia

EASTERN TRUST AND BANKING COMPANY *vs.* AMERICAN ICE COMPANY, WILLIAM G. Johnson, Assignee; Edward M. Willis, Corcoran Fire Insurance Company of the District of Columbia, Lincoln Fire Insurance Company of the District of Columbia, Riggs Fire Insurance Company.	Equity. No. 17259, Docket No. 40.

123 This cause came on to be heard at this term of court on bill, answers, and depositions, and was argued by counsel;

upon consideration whereof it is this 16th day of March, A. D. 1898, adjudged, ordered, and decreed as follows, to wit:

First. It appearing to the court that the improvements on the real estate herein described were destroyed by fire before the filing of this bill, and that no rents or profits have accrued therefrom since the said filing of this bill, and the court being of opinion that the complainant is not entitled to any rents or profits accruing from said real estate prior to the filing of this bill, it is therefore adjudged, ordered, and decreed that the defendant William G. Johnson, assignee, be not required to account to complainant for any of the rents collected by him; and it appearing to the court that no income has accrued or is derivable from said real estate since the destruction by fire of the improvements prior to the filing of this bill, the prayer for a receiver is therefore denied.

Second. It is further adjudged, ordered, and decreed that the complainant is not entitled to any lien upon the money paid to said Johnson, assignee, by the Corcoran, Lincoln, and Riggs Fire Insurance Companies, and is not entitled to have the same to apply to the indebtedness secured by this deed of trust in these proceedings mentioned, and the prayers of the bill as to said fund are denied.

Third. It appearing to the satisfaction of the court that there is still due on account of the bonded indebtedness secured by
124 the said deed of trust or mortgage in these proceedings described the sum of twenty-one thousand three hundred and fifty dollars ($21,350), with interest thereon from the second day of December, 1892, it is therefore adjudged, ordered, and decreed that the complainant, The Eastern Trust and Banking Company, as trustee under said mortgage or deed of trust in these proceedings described, is entitled to have the same foreclosed, and to have the real estate therein described sold for the purpose of paying the balance due on the bonded indebtedness secured by said deed of trust, and Benjamin F. Leighton and Calderon Carlisle are appointed as trustees to sell all the right, title, and interest of the parties to this cause in and to all that certain piece, parcel, and lot of real estate situate in the city of Washington, District of Columbia, more particularly described as follows, to wit:

All that piece or parcel of land, with the improvements thereon, lying in the city of Washington, in the District of Columbia, and being opposite square two hundred and seventy (270), running thence southerly with the west line of Thirteen street to the channel of the Potomac river; thence westerly with said channel to a point opposite the southwest corner of said square numbered two hundred and seventy; thence due north to the said southwest corner of said square two hundred and seventy, following the eastern line of what is alleged to be Thirteen-and-a-half street; thence with the southern line of said square two hundred and seventy two hundred and fifty-five (255) feet one (1) inch to the place of
125 beginning, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the remainders,

reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand, either at law or in equity or otherwise however, of the said parties to this cause.

And the course and manner of their proceeding shall be as follows: They shall first give a bond, to be approved by the court, in the sum of five thousand dollars, conditioned for the faithful performance of their duties as such trustees, and shall give at least ten days' previous notice in one or more daily newspapers published in the city of Washington, in said District, and such other notice as they may think proper, of the time, place, manner, and terms of sale; which terms of sale shall be as follows, to wit: One-third of the purchase-money in cash, and the balance in two equal instalments at one and two years, secured by the notes of the purchaser or purchasers, with interest thereon from the date of sale, and a good and valid deed of trust, to the satisfaction of the trustees, on the property sold, or all cash, at purchaser's option; and as soon as may be convenient after such sale or sales the trustees shall return to this court a full and particular account of the same, with an affidavit of the truth thereof, and the fairness of such sale or sales, annexed; and upon full compliance by the purchaser or purchasers with the terms of sale, and upon the final ratification of such sale or sales by the court, and not before, the said trustees by good and sufficient deed, to be executed and acknowledged in conformity to law, shall convey to the purchaser or purchasers of said property, and
126 to his, her, or their heirs, the property to him, her, or them sold free, clear, and discharged of all claim of the parties to this cause, or of any person or persons claiming by, from, or under them; and the said trustee shall account to this court for the money arising from such sale or sales, and the notes which may be taken for the same shall be disposed of under the direction thereof, after deducting therefrom the costs of this suit and such commission to the trustees as the court shall see proper to allow in consideration of the care, skill, and fidelity with which they shall appear to have discharged the trust.

By the court: W. S. COX, *J.*

From the first and second paragraphs of said decree the complainants in open court, at the time of the signing thereof, appeals to the Court of Appeals, and the defendant- American Ice Company and William G. Johnson, assignee of the American Ice Company, in open court and at the time of signing said decree, appeal from the third paragraph of said decree to the Court of Appeals, complainants to give bond on appeal in the penalty of five hundred ($500) dollars and the defendants who have appealed in like sum; or, in lieu thereof, each of said parties may deposit the sum of one hundred ($100) dollars in cash.

W. S. COX, *J.*

Memoranda.

March 28, 1898.—$100.00 deposited by complainants in lieu of appeal bond.

April 5, 1898.—$100.00 deposited by defendant Johnson in lieu of appeal bond.

127 *Stipulation as to Transcript of Record.*

Filed April 15, 1898.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Complainant, *vs.* AMERICAN ICE COMPANY *et al.*, Defendants. } No. 17259. In Equity.

It is hereby stipulated and agreed by and between the complainant and the defendants American Ice Company and William G. Johnson, assignee, through their respective counsel, that in making up the transcript of the record on the appeals taken herein by said complainant and said defendants respectively the clerk shall copy and include therein the following papers, pleadings, and documents herein filed, and none other, to wit:

The original bill, with Exhibit "A" thereto annexed; the joint and several answer *to* the defendants American Ice Company and Edward M. Willis and the separate answers of the defendants William G. Johnson, assignee, and the Corcoran Fire Insurance Company of the District of Columbia; the deposition of George B. Canney, taken on behalf of complainant, with the exhibits therewith filed, excepting the notices of sale and adjournments thereof, being three newspapers clippings attached to said deposition; the residue of the testimony taken on behalf of complainant (no testimony having been taken on behalf of defendants), together with the exhibits filed therewith, excepting Exhibits "J. A. L.

128 Nos. 1, 2, 3, 4, 5, 6, 7, and 8" and the printed transcript of record referred to in Exhibit "J. A. L. No. 9" as "Complainant's Exhibit No. 2," which printed transcript is identical with Exhibit "A" filed with the original bill; the final decree, with the note as to the appeals therefrom; this stipulation of counsel.

And it is further stipulated and agreed by and between the complainant and said defendants, through their counsel, as aforesaid, that the defendants The Lincoln Fire Insurance Company of the District of Columbia, The Riggs Fire Insurance Company appeared herein and filed answers to the original bill in due course, the same in substance and effect as the aforesaid answer of the Corcoran Fire Insurance Company of the District of Columbia; that the complainant in due course filed general replication to the answers of each of the defendants in this cause; that before making answer to the said original bill the defendants American Ice Company, William G. Johnson, assignee, and Edward M. Willis interposed a general demurrer thereto, and that the same was, upon hearing, overruled, with leave to said defendants to answer; that a preliminary application for the appointment of a receiver to take possession of the property of the American Ice Company situate in the District of Columbia and receive the rents, issues, and profits thereof and apply the same under the direction of the court was made on behalf of complainant, was heard on affidavits filed in

support thereof and on other affidavits filed in opposition thereto, and was denied; that Exhibits "J. A. L. Nos. 1, 2, 3, 4, 5, 6, 6, and 8" tend to show, and it is hereby admitted to be the fact, that the complainant, as trustee under the deed of trust in the proceedings
129 mentioned, caused a notice of sale at public auction of the parcels of real estate, situate in Penobscot county, Maine, and in the District of Columbia, in said deed of trust described, together with the easements, rights, and appurtenances, to be inserted on April 11, 18, 25, May 2 and 9, 1894, in the Bangor Daily Whig and Courier, a daily newspaper printed and published in said county of Penobscot and State of Maine; on April 11, 18, 25, and May 2, 1894, in the Bangor Daily News, a daily newspaper published in said county and State; on April 7, 14, 21, 28, and May 5, 1894, in the Evening Star, a daily newspaper published in the city of Washington, District of Columbia, and on April 7, 14, 21, 28, and May 5, 1894, in the Washington Post, a daily newspaper published in said city of Washington, District of Columbia; that each of said notices of sale so published specified May 9th, 1894, at ten o'clock a. m., as the time and the Bangor house, in the city of Bangor, in the county of Penobscot and State of Maine, as the place at which said sale would be held, contained a proper reference to said deed of trust, with a recital of default thereunder, described the property to be sold substantially as the same is described in said deed of trust, and stated that the terms and conditions of the sale would be announced at the time of sale, and that the trustee reserved the right to adjourn such sale or sales under the authority conferred by said deed of trust; that complainant thereafter gave notice, as trustee as aforesaid, by advertisement inserted in said Bangor Daily Whig and Courier on May 25, June 1, and June 8, 1894, and in said Washington Post on May 22, 29, and June 5, 1894, that the said sale as theretofore advertised to occur on the 9th day of May, 1894,
130 was adjourned to Friday, June 8th, 1894, at 11 o'clock a. m., at the same place, and that complainant, as trustee, as aforesaid, thereafter gave notice, by advertisement inserted in said Bangor Daily News on September 1st and 8th, 1894, and in said Evening Star (of Washington) on August 29th and September 5th, 1894, that said adjourned sale had been adjourned or postponed to Saturday, September 8th, 1894, at eleven o'clock a. m., at the same place, at which time and place the aforesaid real estate and appurtenances of the American Ice Company, situate in Penobscot county, Maine, and in the District of Columbia, would be sold at public auction under said deed of trust.

Witness the signatures of said parties, by their respective counsel, this fifteenth day of April, A. D. 1898.

EASTERN TRUST AND BANKING COMPANY, *Complainant*,
By B. F. LEIGHTON,
G. FRANCIS WILLIAMS,
Its Solicitors.

CARLISLE & JOHNSON,
For American Ice Company, Wm. G. Johnson, Assignee.

131 UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 131, inclusive, are true copies of originals in equity cause No. 17259, wherein The Eastern Trust and Banking Company are complainants and The American Ice Company *et al.* are defendants, as the same remain upon the files and records of this court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 3d day of May, A. D. 1898.

JOHN R. YOUNG,
Clerk Supreme Court, District of Columbia.

Endorsed on cover: District of Columbia supreme court. No. 800: Eastern Trust and Banking Company, appellant, *vs.* American Ice Company *et al.;* and No. 801: American Ice Company *et al.*, appellants, *vs* Eastern Trust and Banking Company. Court of Appeals, District of Columbia. Filed May 5, 1898. Robert Willett, clerk.

80 *Depositions for Complainant.*

Filed September 22, 1899.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Plaintiff,
vs.
AMERICAN ICE COMPANY ET ALS., Defendants. } No. 17259.

Be it remembered that on this 29th day of August, 1899, personally appeared before me, Matthew Laughlin, a notary public in and for the county of Penobscot and State of Maine, GEORGE B. CANNEY, as witness for the plaintiff in the above entitled cause, Eastern Trust and Banking Company, plaintiff, *vs.* American Ice Company *et als.*, defendants; Charles A. Bailey and Benjamin F. Leighton, of counsel for the plaintiff, and William G. Johnson, counsel for the defendants Willis and The American Ice Company; and the said witness, being first duly sworn, did depose and say, in response to the direct and cross interrogatories to him propounded by the said counsel, as follows:

Direct examination.

By Mr. LEIGHTON:

Q. Mr. Canney, you have already been a witness once in this case and testified? A. I have.

Q. Do you occupy the same position with respect to the Eastern Trust and Banking Company now that you did at the time
81 your former deposition was taken? A. I do.

Q. You at that time testified that the property covered by the deed of trust in controversy in this case, situated in Hampden, in this State, sold for $14,000. That is correct, is it? A. That is correct.

Q. I ask you what became of that money, what disposition was made of it by the Eastern Trust and Banking Company—that $14,000. A. Well, there wasn't any money paid in. The sale was to the bondholders—to the committee of the bondholders.

Q. And the money was actually paid to them and was finally deposited by them with the Eastern Trust and Banking Company at the second sale, was it? A. Well, there was no money paid in.

Q. At the first sale? A. At the first sale; no.

Q. The sale in September of '94 there was no money paid in? A. No.

Q. When was the money paid in for this sale? A. There was money paid in to us by the bondholders' committee, the money they received when they sold the property.

Q. At what time? A. In '97, I think—March, '97—when they sold the property to the Consolidated Ice Company.

Q. What services were rendered by the Eastern Trust and Banking Company as trustee in respect to this property covered by the trust, and what did they do? A. Well, originally we cer-
82 tified the bonds, for which we received our pay, compensation; that was the original transaction. After that there was no compensation; we were to receive none unless we had to take some action when there had been a default or something whereby we had to taken action, then the mortgage recited, I think, we were to receive a reasonable compensation for our services. Of course, there was nothing until the default; but this compensation we did receive was for looking after insurance and taxes, and in a general way what any trust involves after default had been made

Q. Prior to this sale, what you characterize as the first sale, the sale that took place in September of '94—had you at that time incurred any liability on account of the trust? A. Nothing except what we had paid out for insurance between the time they failed——

Q. That is what I want to know. Had you incurred any liabilities? And, if so, state what they were. A. The liabilities were for money we had disbursed for taxes and insurance and to keep the property in shape prior to the sale. That was the request of the bondholders, I think, in addition to what our obligation would be anyhow as a trustee.

Q. Have you got the vouchers for the disbursements made by you on that account? A. I have.

Q. Will you kindly produce them? A. I have the vouchers for the items as appearing in that statement (producing them).

Q. I will hand you a statement purporting to be statement
83 of account of your trust with the American Ice Company and ask you to examine it and state whether that is a correct statement of account between the Eastern Trust and Banking Company and the American Ice Company. A. I should say it was.

Q. Were those moneys for which you claim credit there actually disbursed, except the $700, by you? A. They were.

Q. And for the purposes designated in that paper? A. They were.

Mr. LEIGHTON: If you have no objections, I will offer that in evidence.

Mr. JOHNSON: Yes; I object to it.

Mr. LEIGHTON: I will offer it in evidence.

(Paper marked "G. B. C. No. 1.")

Q. Mr. Canney, have you the vouchers representing the disbursements made by you for all of these items for which you claim credit, except the item of $700, mentioned in this memoranda? A. I have.

Q. You will please produce them. (Witness does so.)

(Vouchers produced were marked as follows: "G. B. C. No. 2," "G. B. C. No. 3," "G. B. C. No. 4," "G. B. C. No. 5," "G. B. C. No. 6," "G. B. C. No. 7," "G. B. C. No. 8," "G. B. C. No. 9," "G. B. C. No. 10," "G. B. C. No. 11," "G. B. C. No. 12," "G. B. C. No. 13," "G. B. C. No.

14," "G. B. C. No. 15," "G. B. C. No. 16," "G. B. C. No. 17," "G. B. C. No. 18," "G. B. C. No. 19," "G. B. C. No. 20," "G. B. C. No. 21," "G. B. C. No. 22," "G. B. C. No. 23," "G. B. C. No. 24," "G. B. C. No. 25," "G. B. C. No. 26.")

84 Q. Were the several sums mentioned in those vouchers which you have filed actually paid and disbursed by you—by the Eastern Trust and Banking Company—in accordance with those vouchers? A. They were.

Q. A few of those items, I observe, two of them, were paid after the date of the sale. One was paid February 13, 1895, and another November 1st, 1895; one was for Mr. Pearl, auctioneer, and the other was to Davis and Bailey, as attorneys, $50. A. Well, they were for services rendered prior to the sale.

Q. Was this auctioneer the auctioneer that cried the sales? A. He was.

Q. And the money disbursed was on account of that service? A. It was; yes.

Q. Your last item in this memoranda is for $700, trustees' services. State what service was rendered for which that charge was made. A. Well, it would be the general service of a trustee; in this specific case it was for disbursing the money, paying the bills, looking after insurance and taxes, and the sale, and the general service of a trustee.

Q. Including your commissions as trustee for the sale of September 8, 1894? A. Yes; the first sale.

85 Q. State whether or not that charge is a fair and reasonable one for the services actually rendered by the company. A. I should say it was. We talked it over carefully and we concluded that was a reasonable compensation for the services rendered.

Q. It is on a basis, I notice, of 5 per cent. of the amount of the sale, the amount for which the property sold in this jurisdiction? A. Yes.

Q. Were any services rendered by the trust company in its quality of trustee in respect to the Washington property, the property situated in Washington? A. Yes.

Q. Of what did those services consist? A. Well, one was, perhaps, a trip I took to Washington to get the standing of the case there and see what method was best to adopt to protect the bondholders.

Q. What are your duties as an officer of the complainant in respect to their keeping of their accounts and supervision of their accounts? A. Well, my position is secretary. The treasurer really is the book-keeper, makes the entries probably most of the time—the actual entries on the book—but, of course, in a small bank as we are we all of us do more or less. If he should happen to be away, why, of course, I take the charge and keep the books and do his work while he is away, which he is at present, but when he is here of course his duty as treasurer——

Q. Who is your treasurer? A. Dr. Charles D. Crosby.

86 Q. Is he in the jurisdiction or out of it at present? A. I don't know what you mean, exactly, by jurisdiction. He is away on a vacation now.

Q. Not in the city? A. No.

Q. Have you the books of original entry in respect to these items of disbursement? A. I have.

Q. Will you produce it, please? I don't know but Mr. Johnson would like to see it. A. Unless you actually want it, it is quite a job. It runs way back. It will take some time to hunt them up. Of course, if you want it, I will produce it, but it will take some time to hunt them up. Those entries all appear on the cash book because they have to in the settling of the cash, of course.

Q. Do you know whether they appear in different cash books? A. No; we only have one cash book.

Q. But the items, you mean, are different pages, different points, of course, paid at different times; is that what you mean? A. Yes.

(Cash book produced.)

Q. It appears by the record that the sale made by the bondholders some time in March of '97—that the title to this property was held by the trust company between those dates. Is that so? A. There had never been any title passed. We held it.

Q. After the sale of September 8, 1894? A. It had never been deeded up to the time of the sale in '97.

87 Q. And you never up to the date of this second sale had received any actual money; no money had been paid to you by the purchasers of the property? A. Not by the purchasers; no.

Q. The purchase-money for the sale of September 8 was paid at the time of the second sale, was it? This $14,000 was paid at the date of the second sale or about that time? A. Well, I presume it was included in that, you know.

Q. I see the balance you ascertain to have been actually paid—the net balance that was realized from this sale of September 8—was $11,775.33. That is the correct balance, is it? A. It is.

Q. How was that balance disposed of by you—by the trust company? Was it paid on account of the bonds or how was it disposed of? A. Well, that would come into the money that we received, of course, from the Consolidated Ice Company. When the disbursement was made it was made from the funds received from the Consolidated Ice Company.

Q. And that money was paid by you on account of the bonds? A. That was included in money that was paid, making the dividend which we did on the bonds.

Q. Have you got a list of the bondholders? A. I have.

Q. Are you able to produce it? A. Yes; I have it here.

(List produced.)

88 Q. Is that a correct list of the bondholders? A. It is.

Q. With the number of bonds which they hold? A. It is. It is the list we paid the dividend on.

Q. Have you the addresses of these parties? A. Yes.

Q. Can you furnish them as a part of your deposition? A. Yes; I think so.

Mr. LEIGHTON: I offer list of bondholders in evidence.

(Paper containing list of bondholders marked "G. B. C. No. 27.")

Counsel stipulate and agree that the stenographer may incorporate a copy of this paper, list of bondholders, Exhibit "G. B. C. No. 27," and return the original to the witness.

Cross-examination.

By Mr. JOHNSON:

Q. Mr. Canney, in this list of bondholders, dated March 18, 1897, which you have filed, there appears opposite the name Public Works Company the signature, "Public Works, James H. Cutler, trustee." Is that gentleman a representative of the Public Works Company? A. He is.

Q. Is that the genuine signature of that person? A. It is.

Q. I also observe the signature of T. J. Stewart & Co. opposite their name. Is that their genuine signature? A. It is.

Q. Are all these signatures opposite the names to which they relate the genuine signatures of those persons? A. They are.

89 Q. This in reality is a receipt from those persons for those payments? A. That is what it is.

Q. Now, I notice opposite a number of the other names the words "receipt" written. Does that mean that the company holds a separate receipt not written on this particular paper? A. It does. The parties were out of town, I presume. We have the receipts.

Q. So that in those cases where the parties were accessible you had them receipt on this paper? A. We did.

Q. In the other cases where the word "receipt" is written you hold their separate receipt for that, do you say? A. We do.

Q. Were they furnished with a statement showing how this dividend was arrived at? A. I don't recollect now as to that. Any inquiries asked, we, of course, gave them all the information we had

Q. Were any of the parties advised as to how this dividend was arrived at? A. Well, I don't recollect, I am sure. That was the dividend authorized by a committee of the bondholders—that dividend in this document we have here. That settlement was authorized and I don't know whether we furnished them. I presume when we paid them we stated it was a dividend of certain per cent. on the amount of money received from the sale of property.

90 Q. They actually received those amounts? A. They did. That dividend was authorized by the committee of the bondholders by a statement from them which I have here.

Q. Will you let me see that?

(Paper produced.)

Q. This paper, then, is the authority upon which the trust company made the dividend to the bondholders? A. Yes.

Mr. JOHNSON: I would like to have this go in evidence as part of the witness's cross-examination.

(Paper marked "G. B. C. No. 28.")

Counsel stipulate and agree that the stenographer may incorporate a copy of this paper, "Exhibit G. B. C. No. 28," and return the original to the witness.

Q. Mr. Canney, when you testified before in this case you annexed to your deposition, among other things, what was marked "Complainant's Exhibit No. 1," a paper signed by Edward L. Stewart, J. B. Huckins, John Miller, and dated Bangor, September 8, 1894, as being the terms of sale at which the property was offered in September, 1894. Will you look at it for the purpose of refreshing your recollection and state if that is correct (showing witness printed case). A. I presume it is correct if it appears there as it is in the document.

Q. You stated that "Exhibit G. B. C. No. 1," containing certain items taken from the cash book of your company, is a correct transcript of items appearing in that book. A. It is.

91 Q. Are those all the items appearing in the books of this company relating to the transaction between the company and the American Ice Company? A. I think so, including the first sale, up to the time of the first sale.

Q. Are those all the items that appear on your books? A. Up to the time of the first sale?

Q. At any time. A. Well, of course, we had some expense after the first sale, up to and including the time we sold it to the bondholders; that is all the items that appear that we charged them with, up to November 1st, '95, is the last item on here. That, I explained before, referred to bills that we contracted previous to the sale, only it was not paid until afterwards.

Q. Have your books any other items relating to the business between the Eastern Trust and Banking Company and the American Ice Company? A. I don't think they have.

Q. No items at all? A. Not up to the time of the first sale.

Q. Have they any items since that time? A. I don't recollect, I am sure.

Q. Do you know? A. I presume they have; we paid our money after that.

Q. Did you receive any money after that? A. O, yes; we received money.

Q. Does that appear on the books? A. Yes.

Q. Does it appear on your books what you received? A. Certainly.

Q. When you received it? A. Certainly.

92 Q. From what source? A. Certainly.

Q. And for what purpose? A. Certainly.

Q. Does it appear on your books what disposition was made of it? A. Certainly.

Q. Does it appear on your books what, if any, charges the company made against the ice company? A. Certainly.

Q. Does it appear for what those charges were? A. Certainly.

Q. And when they were made? A. Exactly.

Q. Now, do the books of the company show every receipt of money and every disbursement of money relating to the transactions between the American Ice Company and the Eastern Trust and Banking Company? A. They do.

Q. Can you furnish a transcript of all the entries that appear on your books? A. I can.

Q. Will you do so? A. It will take time to do so.

Q. Well, of course, I don't mean instantly, but to be attached as a part of your deposition? A. Certainly we can furnish a transcript of the books. Every item of money we have paid out or received in regard to the American Ice Company appears on the books, but we will have to hunt them up.

93 Mr. JOHNSON: I mean all entries on the books of the Eastern Trust and Banking Company concerning the American Ice Company from the 13th of October, 1893, the date of its assignment, to date—a full transcript of all entries.

(Paper annexed, marked "G. B. C. No. 29.")

Q. You know Mr. John Miller, do you not? A. I do.

Q. Mr. Miller stated in his deposition in this cause that the Eastern Trust and Banking Company made a statement of the amount of rents they had received and all the income they had received from the property, and showed the bills they had paid, and gave the property credit for $16,500 received from the Consolidated Ice Company of New York, $4,800 rent received from the Penobscot River Ice Company for the two years they had it rented. Is that correct? A. I think it is $2,400. I think Mr. Miller is wrong in that. It was only rented for one season. Upon examination I find Mr. Miller was right. It was $4,800, 2 years' rent.

Q. Did you give them a statement of account? A. We did when we settled with them; yes, sir.

Q. Did the company retain any copy of that statement? A. I think they did. I think it is this statement here that I produced this morning.

Q. You mean this statement dated March 12, '97, and signed by Messrs. Miller, Huckins, and Stewart? A. No; it is not included in this statement.

Q. Are you able to determine from anything in your possession whether or not the company retained a copy of the statement to which Mr. Miller referred? A. No; I do not know that they did.

Q. Will you search for such a copy and, if you find it, annex
94 it to your deposition? A. I will.

Q. Do you recall, as matter of fact, that a statement of that character was made up? A. Oh, yes; we went over it. All the committee were here and we went over the whole transaction and arrived at that statement, and I produced vouchers for all money paid out and all money that we had received.

Q. What is your recollection as to whether that statement was an

oral statement or a statement of account? A. I think it was an oral statement, and the vouchers produced—well, it couldn't have been an oral statement, perhaps, because I had to have some statement in order to compare with the vouchers, you know; but it has been so long that it has gone from my mind now just how we did settle it.

Q. If such a statement was made, was it made up by yourself? A. Yes; it would be. Yes.

Q. So that if there is copy in the company's papers you would have no difficulty in finding it? A. No.

Q. Now, you have referred frequently to a committee of bondholders. What personal knowledge have you as to those persons being a committee of the bondholders having authority in the premises? A. We have the original appointment of them and their signatures under seal that they are a committee appointed by the bondholders at such a time.

Q. Whose signatures? A. Mr. Stewart, Mr. Field, I think Mr. Huckins, whoever the committee was.

95 Q. Have you that paper here? A. I could produce it; yes. (Paper produced.)

Q. This paper is a copy of the original paper exhibited to you as the authority of the committee? A. I believe it so states.

Q. Did you ever see the original? A. I don't recollect now whether the original was showed us or not. I presume we did, though.

Q. That is the only paper that you have? A. Well, that is the original one. We have got some others here. I haven't had a chance to look them over. I don't know where they are.

Q. This is the paper you referred to as the authority? A. Yes; that is the paper I referred to.

(Paper offered in evidence and marked "G. B. C. No. 30.")

(Counsel stipulate and agree that the stenographer may incorporate a copy of this paper, Exhibit "G. B. C. No. 30," and return the original to the witness.)

Q. Now, Mr. Canney, do you remember when the trust company took physical possession of the property in Maine? A. I don't have it in my mind.

Q. Would the entries on the book show? A. I think I could find out.

Q. Can you approximate it from memory? A. I cannot, but I think it would be shortly after the assignment.

Q. Can you state whether it was before or after the offer and sale in September, '94? A. Oh, it was before.

96 Q. Before? A. Oh, certainly.

Q. Can you state when you gave up the possession of it? A. Well, I don't suppose we gave up the possession of it until the deed was passed to the Consolidated Ice Company—that is, we acted as agent after the property was sold first to the bondholders, and between that time and the time they sold it we acted as agent for them.

Q. And when you made the actual conveyance to the Consolidated Ice Company, then, of course, you gave up possession? A. Certainly.

Q. Since then you have had nothing to do with the property? A. No.

Q. Mr. Canney, in "G. B. C. No. 1" you have an item under date of March 23, 1893, "Edwards and Barnard, attorneys, $25." Do you remember what that was for? A. That was for advice.

Q. In connection with what? A. In connection with the taking possession of the property in Washington.

Q. In execution of the mortgage? A. Yes.

Q. Then, on July 1, '94, you have a similar charge to the same gentleman. Do you remember what that was for? A. That was in the same connection, further advice.

Q. In connection with that same matter of gaining possession? A. Yes.

97 Q. Well, on November 1st, '95, you have a memorandum of charge to Messrs. Davis and Bailey, attorneys, $50. Do you remember what that was for? A. That was for their advice at this end—our attorneys on this end.

Q. That was after litigation had commenced? A. Yes.

Q. Has that dividend of 39 per cent. been actually paid by you and received by all of the bondholders? A. It has.

Q. There is none of it outstanding and unpaid at this time? A. No; not that I know of.

Q. I notice in this statement for the distribution of the fund, dated March 12, 1897, there is an item for compensation to be retained by the trust company of $1,375. Is that inclusive or exclusive of the $700 appearing in Exhibit "G. B. C. No. 1"? A. That is inclusive.

Q. It is $675 additional. Then, can you state for what services that $675 was allowed? A. The same as the other, for trustee services. We continued to look after it from the date of the first sale to the date of the last sale.

Q. In this statement I also find this paragraph: "Amount to be paid to Penobscot Ice Company, to be divided by them between the ice and tools, they making a satisfactory agreement with the assignee of the unsecured creditors of the American Ice Company as to amount to be paid for tools, $3,500." Do you know who was

98 referred to there as the assignee of the American Ice Company? A. I think it was B. C. Additon. My recollection is that he was the assignee.

Q. There is also this item: "For balance of money paid out by yourself for taxes, insurance, and repairs to February 27th, 1897, including amount to be charged to real estate by order of court (1,051.42), $921.35." Does that 1,051.42 refer to a credit on a note held by the trust company of the American Ice Company on which suit was brought in Washington? A. It does.

Q. Is the ice referred to in this statement the same ice which was in the ice-house at the time of the assignment? A. No; I think

not. This is from recollection; I don't know anything about it, because that statement—that money was brought to us by the bondholders and deposited with us, and we made that statement up for their benefit. Now, in regard to that ice I don't know. I haven't any personal knowledge at all, whatever; don't know whether that is the same ice or not. When that statement was made we were acting as agent; we were not acting as trustees.

Q. Had the account of the foreclosure and mortgage been settled and paid before this statement was made? A. Well, the money was paid in to us when the property was sold to the Consolidated Ice Company; that money was paid in,

Q. But before that money? A. There was no money paid in.

Q. Nothing had been paid to the company? A. No.

99 Q. On account of the sale? A. No.

Redirect:

Q. Mr. Canney, you stated that the Eastern Trust and Banking—took possession of this property in the State of Maine covered by the trust prior to the sale of September 8, 1894; are you able to fix the date? A. It was prior to the first announcement, which was in May. It was advertised first in May, '94, I think. We had possession of it immediately after the failure of the company, which, I think, was in '93. Of course, I would have to refresh my memory by data somehow. We didn't allow it to run along any length of time after the assignment before we took possession; that wouldn't be business.

Q. Then your entry was for the purpose of taking possession under the power embraced in the deed of trust and for the purpose of sale? A. Certainly.

Q. Did you collect any rents or was any revenue derived from the American Ice Company from the date you took possession up to the time of the first sale—that is, the sale of September 8? A. From the American Ice Company?

Q. Yes, sir. A. No, sir.

Q. You simply were in possession as care-takers and to preserve the property and protect it pending the sale, was that it, under the foreclosure? A. That is it.

Q. What disposition did you make of the property after the

100 first sale—that is, was it leased or rented, or how? A. Yes; it was leased at the request of the bondholders. It was leased to the Penobscot Ice Company.

Q. For what time and for what rent? A. For one season; for $2,400 rental for the season.

Q. Was it rented for any longer time than that? A. No.

Q. Then all the money that you derived after the first sale from the rent was $2,400? Is that so? A. Yes; that is my recollection; of course, the books will show; but it is very clear to me.

Q. If your recollection is in error about that, you will correct it in your statement? A. Certainly.

Q. But your recollection—— A. Is that it was only rented for one season for $2,400.

Q. And thereafter it was unrented until the date of the second sale? A. Yes.

Q. Well, do you recollect the date when the receiver was appointed for this property? A. No; I do not.

Q. Do you know who made up the statement dated the 12th of March, 1897? A. I made it up.

Q. Where did you get the data or information upon which it was made? A. From the books of the company.

Q. It appears by this statement that the sum of $20,000 was paid to you. By whom was that paid? A. My recollection — it was paid by the Consolidated Ice Company; the transaction was completed here and they paid the money over to us.

101 Q. Do you recollect who was present at the time the transaction was closed with the Consolidated Ice Company? Were the representatives of the bondholders—Stewart, Miller, or either of them? A. I do not know. I presume they were both here, but I don't recollect.

Q. You have got an item here of $352.92, return premium? A. The policies were cancelled that were taken out under the American Ice Company, the bondholders, and when the title changed the policies were cancelled.

Q. It seems that there was an item here of $3,500 that was derived from the sale of ice and tools upon some agreement with the creditors, the assignee of the creditors of the American Ice Company; that was the Maine assignee, was it? A. Yes.

Q. Do you know whether or not the American Ice Company was indebted to the citizens of Maine at the time of its failure? A. Oh, yes; there were Maine creditors.

Q. And do you know under what authority or by whom that assignee was appointed? A. No; I do not.

Q. Don't know whether there was an assignment made of the American Ice Company or whether it was under the State insolvent law that the assignee was appointed? A. Couldn't say.

Q. The sale of the ice and tools seems to have been made
102 by his authority or with his consent? A. I presume so. That we knew nothing about; wasn't interested in. We have business enough without running after outside transactions.

Recross:

Q. Mr. Canney, in this settlement of March 12, 1897, which you state you made up, I suppose there was included to the trust company all charges that it made for insurance, taxes, or other expense between the time of the sale, in September, 1894, and the date of this settlement? A. That included everything, I think, that comes in there—that balance of expense. I think that balance of expense is the difference of what we had received for this rental and what we had paid out.

Q. And that squared all the obligations to the trust company? A. That squared all the obligations up to that time.

GEO. B. CANNEY.

And also appeared BENNING C. ADDITON as a witness for the plaintiff, and the said witness, being first duly sworn, did depose and say, in response to the direct and cross interrogatories propounded by the counsel, as follows:

Direct examination.

103 By Mr. LEIGHTON:

Q. You may state your full name. A. Benning C. Additon.

Q. What is your occupation? A. I am a lawyer.

Q. A member of the—— A. Penobscot bar.

Q. Are you also a member of the highest court of the State? A. I am a member of the circuit court bar of the United States.

Q. How long have you been an attorney? A. Thirty years.

Q. In practice that length of time? A. I was admitted in '70—twenty-nine years.

Q. Has the State an insolvent law—a law relating to insolvent debtors? A. It had prior to the passage of the last bankrupt law.

Q. Will you state what the provisions of that law were? A. I ought to have the statute here to do that. I wouldn't dare to state the statute.

Q. There was a State statute? A. Yes; chapter seventy, Revised Statutes of Maine.

It is hereby stipulated and agreed between counsel of the respective parties that the law relating to insolvent debtors, as found in the Revised Statutes of the State of Maine and amendments thereto, may be read in evidence without objection upon either side, so far as relevant to the issue here.

104 Q. Now state, Mr. Additon, whether you were the assignee of the American Ice Company under the insolvent-debtor law of this State. A. The judge of the insolvent court, Penobscot county, Maine, conveyed to me as assignee of the American Ice Company insolvent debtors, who were adjudged insolvent on petition of the creditors, all the estate, real and personal, of the said insolvent-debtor corporation, together with all deeds, books of account, and papers relating thereto, and including all the property of every kind of which it was possessed or which it was interested in or entitled to on the first day of February, A. D. 1894, except such property as by law is exempt from attachment and seizure on execution under the laws of Maine. This assignment was dated the 18th day of April, 1894.

Q. Did you qualify as assignee under the laws of the State? A. I qualified prior to the conveyance to me. I qualified as assignee under the laws of this State prior to the assignment to me by the insolvent court.

Q. Did you enter upon the duties of assignee under the law and under your assignment? A. I did.

Q. I will hand you exhibit dated March 12, 1897, which has already been offered in evidence. I find here a statement that the

amount to be paid to Penobscot Ice Company to be divided by them between the ice and tools, they making a satisfactory agreement with the assignee of the unsecured creditors of the American Ice Company as to amount to be paid for tools, $3,500. Do you recollect where that $3,500 came from, the sale of that ice—what
105 ice it was? A. That ice was—I feel quite sure it was ice that was in the ice-house remaining unsold at the time of the failure of the corporation, subject to mortgage or lien or pledge to the Eastern Trust and Banking Company. Prior to the petition in insolvency against the American Ice Company the assets of the American Ice Company were in the hands of the United States circuit court for this district, in the charge of a receiver, John R. Mason. This ice, I think, was ordered sold by the United States court, after notice and hearing, to pay the lien or pledge and the incidental expenses thereto, and I think was sold by the receiver, and notice was issued for a distribution of the assets, and the money was ordered distributed by the United States court.

Q. That ice was not sold by you as assignee? A. No.

Q. How about the tools? A. The tools were sold by me; the mortgage did not cover the tools; I sold the tools for $500.

Q. Did any other assets come into your hands as assignee except the tools? A. Not of any amount; a few dollars, perhaps; odds and ends, a few bills, something of that sort.

Cross-examination waived.

BENNING C. ADDITON.

106 And I hereby certify that the said depositions of the said witnesses were then and there taken down stenographically and afterwards read over to the said witnesses, and by them signed in accordance with the annexed stipulation of counsel.

I further certify that I am not of counsel for any of the parties in this litigation, and am not interested in the proceeding, and that my fee for taking the said depositions, amounting to seventeen $\frac{50}{100}$ dollars, has been paid by the plaintiff. Said sum of $17.50 includes the stenographer's fees and my own fees.

MATTHEW LAUGHLIN,

[SEAL.] *Notary Public in and for the County of Penobscot, State of Maine.*

107 "EXHIBIT G. B. C. No. 1."

Eastern Trust and Banking Company, Bangor, Maine, trustee, in account with American Ice Co. of Washington, D. C.

DR.

1894.
Sep. 9. To proceeds sale of Maine property..... $14,000.00

CR.

1893.				
Dec.	20.	By paid insurance.....	$81.25	
"	27.	" " "	65.00	
	28.	" " "	65.00	
	30.	" " "	32.50	
	30.	" " "	93.00	
1894.				
Jan.	6.	" " "	158.99	
	15.	" " "	15.87	
Feb.	27.	" " taxes 1893.....	317.90	
M'ch	27.	" " insurance.....	27.00	
	23.	" " Edwards & Barnard, attorneys.....	25.00	
		" " G. B. Canney, sect., expenses to Washington, D. C.....	80.00	
May	8.	" " adv. sale, Dailey News, Bangor.....	13.33	
	8.	" " adv. sale, Whig, Bangor....	10.00	
	8.	" " " " Washington Post.	81.90	
	14.	" " " " " Star.	83.98	
	9.	" " " C. P. Pearl, auctioneer.	15.00	
June	8.	" " " " " " " .	15.00	
108				
June	8.	" " " adjourned sale.....	1.75	
	19.	" " " Washington Post.....	9.90	
	8.	" " room, Bangor house.....	1.00	
Sept.	8.	" " " " "	1.00	
	29.	" " adv. adjourned sale, Bangor News.....	3.50	
July	21.	" " Edwards & Barnard, attorneys.....	25.00	
Dec.	7.	" " taxes 1894.....	226.80	
1895.				
Feb.	13.	" " C. S. Pearl, auctioneer.....	25.00	
Nov.	1.	" " Davis & Bailey, attorneys...	50.00	
		" " trustees' services.....	700.00	
				2,224.67
Balance.....				$11,775.33

109 Copy.

"G. B. C. No. 2."

BANGOR, ME., *December 20th*, 1893.

Eastern Trust and Banking Company to D. M. Howard & Son, Dr.

For premium on policy # 225,075, Ins. Co. of North America, $2,500 on American Ice Co. ice-house at Hampden..... $81.25

Received payment,

D. M. HOWARD & SON.

Copy.

"G. B. C. No. 3."

BANGOR, ME., *Dec. 27th*, 1893.

Ea. Trust and Banking Co., city.

Sold premium on policy # 1,503,427, Fire Ass., American Ice Co., $2,000..... ..... $65.00

Paid.

TYLER FOGG & CO.

110 Copy.

"G. B. C. No. 4."

$65.00. BANGOR, *Dec. 28th*, 1893.

Received of Eastern Trust & Banking Company sixty-five dollars, being for premium on policies in the Ins. Co. State of Penn. and Granite State Ins. Co. to American Ice Co.

J. W. McCLURE.

Copy.

"G. B. C. No. 5."

J. H. Boyd & Co., general insurance.

BANGOR, ME., *December 30th*, 1893.

Eastern Trust & Banking Co., Dr.

To premiums.

Policy.	Company.	Property.	
American Ice Co.....	Royal.....	Building.....	$32.50

Paid.

J. H. BOYD & CO.

111 Copy.

"G. B. C. No. 6."

BANGOR, ME., *Dec.* 26, 1893.

Eastern Trust & Banking Co. to W. F. Curran, Dr.

To insurance on American Ice Co.'s buildings, Atlas Mutual pol. # 4457..... $93

Paid Dec. 30, 1893.

W. F. CURRAN.

Copy.

"G. B. C. No. 7."

BANGOR, ME., *Jan'y 6th*, 1894.

American Ice Co. to A. M. Mason, Dr.

For Hanover policy #	325,913.....	$48.75
" "	14.....	24.37
Springfield	8705.....	24.37
Home	8822.....	61.50
		158.99

Paid Jan'y 6, 1894.

ARTHUR M. MASON.

Paid by Eastern Trust & Banking Co.

ARTHUR M. MASON.

112 Copy.

"G. B. C. No. 8."

Eastern Trust & B'k'g Co. in account with Chas. S. Pearl.

Ledger folio 562.

DR.

1893.		
Aug. 3. Endorsement Imperial Nat'l pol's.....	75	
1894.		
Jan. 1. Pennsylvania pol. # 139,087, Am. Ice Co....	32 50	
		$33.25

CONTRA. *Cr.*

1893.	
Nov. 23. By ret. prem. Fire Ass'n pol. 1,503,292..... ...	17.38
	$15.87

Paid Jan. 15, '94.

CHAS. S. PEARL.
TUCK.

Copy.

"G. B. C. No. 9."

HAMPDEN, ME., *Feb.* 26, 1894.

Mr. American Ice Co.:

Your State, county, and town tax in said town for the year 1893, as committed to me to collect, is now due, and which you are requested to pay, is $317.90.

The delivery of this bill is considered a legal demand.

A. A. SMITH, *Collector.*

Received payment Feb. 27, 1894, by the Eastern Trust and Banking Co.

A. A. SMITH, *Collector.*

113

Copy.

"G. B. C. No. 10."

BANGOR, ME., *Feb'y 23d*, 1894.

American Ice Co. to Arthur M. Mason, Dr.

For insurance as follows:

Feb'y 23. To Springfield policy No. 8748.... ..... $27.00

Paid by Eastern Trust & Banking Co.

ARTHUR M. MASON, *Ag't.*

Copy.

"G. B. C. No. 11."

$25.00. WASHINGTON, D. C., *March* 23, 1894.

Received of the Eastern Trust & Banking Company twenty-five dollars for examination of mortgage of American Ice Co. to said Co., in Lib. 1439, folio 417 *et seq.*, of land records, D. C., and opinion in writing and consultations.

EDWARDS & BARNARD.

114

Copy.

"G. B. C. No. 12."

$80. BANGOR, ME., *March 25th*, 1895.

Received of E. T. & B. Co. eighty dollars, expenses of trip to Washington, D. C., relating to American Ice Co. trust mortgage.

GEO. B. CANNEY, *Sec'y.*

Copy.

"G. B. C. No. 13."

BANGOR, ME., *May 8th*, 1894.

Eastern T. & B. Co. to Bangor Publishing Co., Dr.

10² inch adv't in Daily News, April 11, 18, 25, May 2, '94, American Ice Co..... .... 13.33

Paid May 8th.

BANGOR PUB. CO.,
P'r M. B. REED.

115

Copy.

"G. B. C. No. 14."

Eastern Trust & Banking Co. to Boutelle Brothers, publishers of the "Bangor Daily Whig and Courier" and "Bangor Weekly Courier," Dr.

1894.
April 11. Adj. trustee sale, 10 in., every Wed. 5 w..... .... 10.00

Paid.

BOUTELLE BROS.,
By J. KEARNS.

Copy.

"G. B. C. No. 15."

WASHINGTON, D. C., *May* 5, 1894.

Eastern Trust & Banking Co., trustees, Bangor, Me., to the Washington Post Company, Dr.

For advertising as follows:

1894.
April 7. Trustee sale estate of Amer'n Ice Co., 117 l., 1 a w, 5 ed..... .... $81.90

May 10, '94, received payment for company.

A. McCONNELL.

116 Copy.

"G. B. C. No. 16."

WASHINGTON, D. C., *May* 1, 1894

Eastern Trust & Banking Co. of Bangor to the Evening Star Newspaper Co., Dr.

L. f. 5.

1894.

April 7. Sale, 125 lines, 1 a w, 4 times..... ..... $70.31
May 5. " cont., 1 " 13.67

$83.98

Paid May 16, 1894.

THE EVENING STAR NEWSPAPER COMPANY,
By J. — HERRON, *Cashier.*

Copy.

"G. B. C. No. 17."

$15. BANGOR, ME., *May 9th*, 1894.

Received of Eastern Trust & Banking Co. fifteen dollars for services as auctioneer at sale of American Ice Co.'s property this day.

CHAS. S. PEARL.

117 Copy.

"G. B. C. No. 18."

BANGOR, *June 8th*, 1894.

Received from Eastern Trust & Banking Company, trustees, fifteen dollars for services as auctioneer connected with sale of American Ice Co. property for ac. Eastern Trust & Banking Co., trustees.

$15. CHAS. S. PEARL.

Copy.

"G. B. C. No. 19."

BANGOR, ME., *June* 8, 1894.

Eastern Trust & Banking Co. to Boutelle Brothers, Dr., publishers of the "Bangor Daily Whig and Courier" and "Bangor Weekly Courier."

1894.

May 25. Adj. trustees' sale, 1¾ in., 3 ts..... $1.75

P'd.

BOUTELLE BROS.
KERR.

118 Copy.

"G. B. C. No. 20."

WASHINGTON, D. C., *May* 22, 1894.

Eastern Trust & Banking Company, Bangor, Me., to the Washington Post Company, Dr.

For advertising as follows:

1894.
May 22. Adjourned tr. sale, prop. Amer'n Ice Co., 22 l., 1 a w, 3 t. (May 22, 29, & June 5)..... $9.90

June 21, '94, received payment for company.
A. McCONNELL.

Copy.

"G. B. C. No. 21."

Debit Amer. Ice Co. foreclosure ac.

Room at Bangor house for auction sale..... 1
adjourned sale..... 1
June 8, 1894. Sept. 8.

119 Copy.

"G. B. C. No. 22."

BANGOR, ME., *Sept.* 28, 1894.

Eastern Trust & Banking Co. to Bangor Publishing Co., Dr.

2-inch auction, adj., in daily, May 25, June 1 & 8... 2.00
" " sale, adj., in daily, Sept. 1–8..... 1.50
3.50

Paid Sept. 29.

BANGOR PUB. CO.,
P'r M. B. REED.

Copy.

"G. B. C. No. 23."

JULY 27, 1894.

The Eastern Trust & Banking Company to Edwards & Barnard, Dr.

To balance for professional services to date in matter of American Ice Company mortgage and attempted sale... $25.00

Rec'd payment Aug. 1, 1894.
EDWARDS & BARNARD.

120 Copy.

"G. B. C. No. 24."

HAMPDEN, ME., *Dec.* 7, 1894.

Received of American Ice Co. two hundred and twenty-six dollars and 80 cents in full for their State, county, and town tax for the year 1894.

A. A. SMITH, *Collector.*

Paid by the Eastern Trust and Banking Co.

Copy.

"G. B. C. No. 25."

BANGOR, ME., *Jan'y*, 1895.

Eastern Trust & Banking Co. in account with Chas. S. Pearl.

Ledger folio 562.

1894.

Sept. 8. To com's sale, Amer. Ice Co..... 25

Paid Feb'y 13, '95.

CHAS. S. PEARL.
TUCK.

121 Copy.

"G. B. C. No. 26."

BANGOR, *Nov.* 1, 1895.

Eastern Trust & Banking Co. to Davis & Bailey, Dr.

To services rendered to American Ice Co.'s mortgage and sales thereunder from March 13th, 1894, to this date.... $50.00

Rec'd pay't,

DAVIS & BAILEY.

122 Copy.

G. B. C. No. 27.

BANGOR, MAINE, *March 18th*, 1897.

Received of Eastern Trust and Banking Company, trustee, the amount opposite our name, being dividend of 39 per cent. of the par value of the American Ice Company bonds owned by us.

Name.	Par value.	Dividend.	
Public Works Co.	$2,400	$936	March 25, 1897, applied on note. { Public Works. Jas. H. Cutler, treas.
T. J. Stewart & Co.	3,200	1,248	Applied on note M'ch 24, '97. T. J. Stewart & Co.
Same	2,500	975	Geo. F. Bryant, cash. O K. T. J. Stewart & Co.
J. H. Robinson	800	312	J. H. Robinson, by A. J. Robinson.
John A. Bacon	1,900	741	John A. Bacon.
Bacon & Robinson Co.	200	78	Bacon & Robinson Co., by A. J. Robinson, sec.
A. J. Robinson	200	78	A. J. Robinson.
J. B. Foster	2,400	936	J. B. Foster.
Chas. E. Field	1,000	390	Applied on note M'ch 20. C. E. Field.
Dora E. Field	100	39	Dora E. Field, by C. E. Field.
J. B. Huckins	2,800	1,092	Receipt.
Frank Huckins	600	234	Receipt.
Carrie F. Huckins	800	312	Receipt.
Harry Huckins	200	78	Receipt.
John Miller	9,809	3,822	Receipt.
Ann S. Lynch	2,500	975	Receipt.
Frances E. Spring	2,000	780	Receipt.
123 Alice S. Talbot	500	195	Receipt.
Bernice Morse	600	234	Receipt.
Mrs. J. M. Dickey	500	195	Mrs. J. M. Dickey.
	35000	13,650	
	39		
	3150		
	1050		
	13650		

124 Copy.

"G. B. C. No. 28."

BANGOR, *March 12th*, 1897.

To Eastern Trust and Banking Company:

The property of the American Ice Company, including tools and ice contained therein, has been sold to the Consolidated Ice Company of New York for $20,000 and the amount paid in to you $20,000

You have also received from return premiums on insurance policies 350.92

Making a total of $20,350.92

From this amount you are hereby authorized and instructed to make the following disbursements:

Amount to be paid to Penobscot Ice Company, to be divided by them between the ice and tools, they making a satisfactory agreement with the assignee of the unsecured creditors of the American Ice Company as to amount to be paid for tools...	$3,500		
For balance of money paid out by yourself for taxes, insurance, and repairs to Feb'y 27th, 1897, including amount to be charged to real estate by order of court (1,051.42).	921.35		
For compensation to yourself for services to date	1,375		
For expense of John Miller	50	R.	
" " " J. B. Huchins.....	25	R.	
" bill " B. C. Additon.....	10	R.	
" " " C. F. Woodard	130	R.	
" " " C. E. Field, for sale, etc.....	75	R.	
125 For bill of C. A. Bailey for services to date	27	R.	
For bill of B. F. Leighton for services to date	300	R.	
For amount to be retained for further expenses of litigation in Washington, D. C., as per advice of B. F. Leighton	200		
Total			6,613.35
Leaving a balance of.....			13,737.57
Forward			$13,737.57
From this amount you will retain, to be used for further expenses if the same is needed.....			87.57
Leaving a balance of...			13,650

From which you will make a dividend of 39 % on the face of the $35,000 outstanding bonds.

JOHN MILLER,
JOHN B. HUCKINS,
EDWARD L. STEWART,
Bondholders' Committee.

126 "G. B. C. No. 29.

No. 1.

Transcript of Entries Relating to American Ice Company as They Appear upon Cash Book of Eastern Trust and Banking Company, Bangor, Maine.

1894.		American Ice Co. foreclosure account:		
Mar.	22.	To taxes town of Hampden, 1893	317.90	
		Ins. on houses—Royal, J. H. B. & Co	32.50	Page 323
		North Amer., D. M. H	81.25	
		Atlas, W. F. C	93.	
Mar.	28.	American Ice Co. foreclosure account:		
		To G. B. Canney, sec't'y, expenses to Washington	80.	
		Edwards and Barnard, examination of mortgage and opinion	25.	Page 328
Mar.	29.	American Ice Co. foreclosure account:		
		To ins. on houses—Imperial	33.25	
		Hanover 48.75		
		24.37		
			73.12	
		Home	61.50	Page 329
		Springfield	27.00	
		Fire Assoc	65.00	
		State of Penn	65.00	
		Springfield	24.37	
May	8.	American Ice Co. foreclosure account:		
		To adv't sale—Washington Post	81.90	
		" " Daily News	13.33	Page 378
		" " Whig	10.	
May	9.	American Ice Co. foreclosure account:		
		To paid S. S. Pearl, auctioneer	15.	
		" room, Bangor house	1.	
May	14.	American Ice Co. foreclosure account:		
		To adv't Washington Star	83.98	Page 385
June	8.	American Ice Co. foreclosure account:		
		Boutelle & Burr, adv't	1.75	
		C. S. Pearl, auctioneer	15.	Page 418
		Room for sale at Bangor house	1.	
June	19.	American Ice Co. foreclosure account:		
		To paid Washington Post, notice adjourned sale	9.90	Page 433
127				
July	30.	American Ice Co. foreclosure account:		
		To Edwards and Barnard, legal services to date	25.	Page 479
		New form of cash book, pages not numbered.		
Sept.	28.	American Ice Co. foreclosure account:		
		To adv't sale	3.50	1,240.25
Dec.	6.	American Ice Co. foreclosure account:		
		To taxes, 1894	226.80	
Dec.	24.	American Ice Co. foreclosure account:		
		To insurance	65.00	
"	24.	" "	81.25	
Dec.	28.	American Ice Co. foreclosure account:		
		To expenses, receiver, etc	1,051.42*	
Dec.	29.	American Ice Co. foreclosure account:		
		To insurance, Curran	97.50	
		" " B. B. & B	65.00	
		" " Mason	73.12	
		" " McClure	65.00	

* Amount due Eastern Trust and Banking Company from proceeds of ice sold by receiver upon which trust company had a mortgage and ordered charged to the real estate by decree of U. S. district court.

1895.				
Jan'y	8.	American Ice Co. foreclosure account:		
		To insurance, Mason	73.12	
Feb'y	13.	American Ice Co. foreclosure account:		
		To C. S. Pearl, commission sale, Sept. 8	25.00	
Aug.	20.	American Ice Co. foreclosure account:		
		To J. W. Phillips, rent shore, 1893	50.00	
Sept.	20.	American Ice Co. foreclosure account:		
		To legal expenses, B. F. Leighton bill	331.10	
Oct.	29.	American Ice Co. foreclosure account:		
		To insurance, T. F. & Co	40.50	
Nov.	5.	American Ice Co. foreclosure account:		
		To insurance, J. W. McClure	40.50	
Nov.	8.	American Ice Co. foreclosure account:		
		To Davis & Bailey	50.00	
Dec.	13.	American Ice Co. foreclosure account:		
		To taxes	135.00	
Dec.	21.	American Ice Co. foreclosure account:		
		To insurance	73.12	
Dec.	24.	American Ice Co. foreclosure account:		
		To insurance	65.80	
"	24.	" "	58.50	
128				
Dec.	27.	American Ice Co. foreclosure account:		
		To insurance	87.75	
Dec.	30.	American Ice Co. foreclosure account:		
		Insurance	58.50	
1896.				
Jan'y	6.	American Ice Co. foreclosure account:		
		Insurance	65.81	
Jan'y	7.	American Ice Co. foreclosure account:		
		Insurance	29.25	
Jan'y	27.	American Ice Co. foreclosure account:		
		Shore rent, Brewer	50.00	
				3,017.54
				4,257.79
1896.		Forward		4,257.79
Feb'y	17.	American Ice Co. foreclosure account:		
		C. B. Brown's bill, repairs	198.90	
Feb'y	18.	American Ice Co. foreclosure account:		
		Hampden taxes	57.00	
				255.90
				4,513.69
		Cr.		
1894.				
May	9.	By error in ch'g insurance		17.38
				4,496.31

129 "G. B. C. No. 29."

No. 2.

Transcript of Entries as They Appear upon the Record of Foreclosure Book of Eastern Trust and Banking Company of Bangor, Maine.

American Ice Co. in % with Eastern Trust and Banking Co.

1896.						
Mar.	17.	To money advanced as per vouchers to date and interest on same			$4,804.59*	
Mar.	25.	To paid repairs on ice-house			21.45	
Oct.	13.	"	"	taxes 1896	206.88	
Dec.	24.	"	"	insurance, J. W. McClure	131.63	
"	26.	"	"	" T. F. & Co	58.50	
"	31.	"	"	" W. F. C	87.75	
1897.						
Jan'y	2.	"	"	" M. & P	65.80	
"	5.	"	"	" J. W. McC	29.25	
"	6.	"	"	" M. & P	36.56	
"	8.	"	"	" B. B. & B	58.50	
"	7.	"	"	team to Hampden, G. B. C	1.00	
Feb'y	1.	"	"	insurance, M. & P	29.25	
"	2.	"	"	Davis & Bailey to Jan'y 21, 1897	75.49	
"	18.	"	"	insurance, M. & P	10.50	
"	19.	"	"	expenses C. E. Field on sale to C. W. M.	3.50	
		Interest on above amounts to Feb'y 27, 1897			282.95	
						$5,903.60

Cr.

1896.						
Mar.	17.	By received for rent to date			2,400.00	
		" interest on same to date			90.00	
June	30.	" received for rent			600.00	
1897.						
Jan'y	23.	" received for rent			1,800.00	
		" interest on above amounts to Feb'y 27, 1897			92.25	
Feb'y	27.	" balance			921.35	
						5,903.60

Statement and vouchers of above account were shown to bondholders' committee when closing account with them at sale of Maine property to the Consolidated Ice Co.

130 "G. B. C. No. 29."

No. 3.

Transcript of Entries as they Appear upon the Record of Foreclosure Book of Eastern Trust and Banking Company of Bangor, Maine.

Bondholders American Ice Co. in % with Eastern Trust and Banking Co.

Dr.

1897.					
Feb.	27.	To balance of expenses to date		921.35	
		" cash paid John Miller		50.00	
		" paid Penob. Ice Co		3,500.00	
Mar.	19.	" " Eastern Trust & Banking Co., compensation to Mar. 12, 1897		1,375.00	
	18.	" " J. B. Huckins' expense		25.00	
	19.	" " B. C. Additon bill		10.00	

* This amount is made up of total amount of expenses as per transcript No. 1 and interest on the several payments to March 17th, 1896.

19.	"	"	C. F. Woodard's bill	130.00	
19.	"	"	C. A. Bailey "	27.00	
18.	"	"	C. E. Field "	75.00	
17.	"	"	B. F. Leighton "	300.00	
18.	"	"	dividend	13,650.00	
			balance certif. of dep.	287.57	
					$20,350.92

CR.

1897.					
Mar.	5.	By cash received from Consolidated Ice Co. for Maine property, including ice tools, etc		20,000.00	
"	5.	By return premiums, B. B. & B		35.10	
		" " "	T. F. & Co	51.38	
		" " "	M. & P.	98.99	
		" " "	W. F. C	52.65	
		" " "	J. W. McC.	112.80	
					$20,350.92

DR.

1897.					
Apr.	8.	To paid J. A. Lynham		15.63	
May	3.	" " Law Reporter Co		12.60	
July	23.	" " A. G. Kent, lease		50.00	
1898.					
Feb'y	25.	" " J. Cassidy, expense to Wash., D. C.		48.19	
Mar.	25.	" " B. F. Leighton		100.00	
May	9.	" " part of bill for costs appeal		61.15	
					287.27

CR.

1897.					
May	9.	By certif. of dep. to bal			287.57

131

1898.					
May	9.	To bal. of costs of appeal		17.77	
Oct.	20.	" bill for printing brief on appeal		24.75	
1899.					
Feb'y	6.	" bill, C. A. Bailey		6.00	

Copy.

"G. B. C. No. 30."

To Edward L. Stewart, John B. Huckins, Alfred J. Robinson, Bangor, Me.

GENTLEMEN: We hereby constitute and appoint you our attorneys to represent us and act for us in all proceedings which in your opinion may be necessary to be taken for the protection of our interests as holders of bonds issued by the American Ice Co. of Bangor, Me., and secured by a deed of trust to the Eastern Trust & Banking Co. of Bangor, Me., dated December 2, 1889, of certain real estate in Maine and in the city of Washington, and it is our desire that you take all steps necessary for the protection and preservation of said security by the payment of fire insurance and taxes, and that you may obtain as soon as possible a sale by said trustee of all the property covered by said mortgage.

In witness whereof we have hereunto affixed our hands
132 and seals this sixth day of February, 1894.

Bangor, Me., Feb. 6, 1894.

F. H. CLERGUE.	5,000	[s. s.]
T. J. STEWART & CO.	5,700	"
J. B. HUCKINS.	2,800	"
FRANK HUCKINS, HARRY HUCKINS, CARRIE HUCKINS,	1,700	[L. s.] " "
By J. B. HUCKINS, *Attorney.*		"
BERNICE MORSE, By F. H. CLERGUE, *Attorney.*	1,000	"
C. E. FIELD. A. J. ROBINSON, *Attorney.*	1,100	"
BACON & ROBINSON CO., By A. J. ROBINSON, *Sec.*	200	"
A. J. ROBINSON.	200	"
J. H. ROBINSON. A. J. ROBINSON, *Att'y.*	1,100	"
J. A. BACON. A. J. ROBINSON, *Att'y.*	1,900	"

True copy of the original.

A. J. ROBINSON.

133 *Order Referring Cause to Auditor.*

Filed September 27, 1899.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Complainant,
vs.
AMERICAN ICE COMPANY ET AL., Defendants. } No. 17259.

Upon motion of complainant's solicitor, it is this 27th day of September, A. D. 1899, ordered that this case be, and it hereby is, referred to the auditor to ascertain and report the amount due on the bonds secured by the deed of trust in these proceedings described. In taking said account the auditor shall consider the evidence now on file in said case, and such other and further evidence as shall be adduced by either side in the premises.

By the court:

A. B. HAGNER,
Asso. Justice.

134 *Order Amending Reference to Auditor.*

Filed February 7, 1900.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Complainant, *vs.* AMERICAN ICE COMPANY ET AL., Defendants. } In Equity. No. 17259.

On motion of complainant's solicitor, it is this 7th day of February, A. D. 1900, ordered that the reference to the auditor passed herein on the 7th day of February, A. D. 1899, be, and it hereby is, amended and enlarged so that the auditor be, and he hereby is, authorized and directed to state the account of complainant as trustee under the deed of trust in complainants' bill described, and to ascertain and report the amount of the indebtedness still due upon said bonds under said trust and report the same to the court.

By the court:

JOB BARNARD, *Justice.*

135 *Report of Auditor.*

Filed March 23, 1900.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY *vs.* AMERICAN ICE COMPANY ET AL. } No. 17259, Equity Docket 40.

This cause is referred to the auditor to state the account of the complainant as trustee and to report the amount due on the bonds secured by the deed of trust in these proceedings described. After due notice, I proceeded under this order of reference and return herewith the testimony and exhibits submitted in proof.

The complainant and the defendant American Ice Company are corporations incorporated under the laws of the State of Maine. In December, 1889, the said American Ice Company executed and delivered to the complainant a deed or mortgage conveying all of its real estate and other property situated in the town of Hampden, in the State of Maine, and in the city of Washington, in the District of Columbia, to secure bonds of the said American Ice Company to the amount of $40,000.00, payable to the said Eastern Trust and Banking Company or bearer in yearly instalments of $5,000 00 each, the first to be payable in three years from December 1st, 1889, and bearing interest at the rate of six per cent. per annum, payable semi-annually. The first instalment of the bonds fell due December 1st, 1892,

and was paid, together with the interest then due upon all the bonds. In the meantime these bonds were delivered to various parties in the course of business. After default in the payment of the second instalment of the bonds and of the interest, such default continu-
136 ing for more than ninety days, the complainant company as trustee, by direction of the requisite number of bondholders, proceeded to execute the said trust by advertising for sale the real estate and personal property situated in the State of Maine, and on the 8th of September, 1894, John B. Huckins, E. L. Stewart, and John Miller, claiming to act as a committee of the bondholders, made a bid of $14,000.00, at which the property was struk off to them. No payment was made by the said parties, nor were the terms of sale in any respect complied with, but the property remained in the custody of the complainant trustee until sold by the said trustee, about the last of February or the first of March, 1897, to the Consolidated Ice Company. In this sale there was included a quantity of ice stored in the ice-houses of the said American Ice Company and a quantity of tools. It is claimed that these chattels were not included in the said deed of trust, and that they were sold in connection with the real estate as a matter of convenience.

The gross amount of this sale was $20,000.00, which was paid by the purchaser to the complainant trustee. By subsequent agreement of the said alleged committee of bondholders, the portion of this gross price representing the ice and tools sold was fixed at $3,500.00.

On the 18th of March, 1897, the complainant trustee, by the written direction of the said so-called committee of bondholders, a copy of which is contained in Exhibit "G. B. C. No. 28," attached to the deposition of George B. Canney, distributed to the holders of the remaining bonds sums equal to thirty-nine per cent. of the par value of the said bonds. A statement of this distribution will be found in Exhibit "G. B. C. No. 27," attached to the deposition of the said George B. Canney.

137 The question of the appointment of the said committee and of their authority will be hereinafter considered.

The first controversy arising here is whether the offer by the trustee of the property in Maine for sale on September 9th, 1894, and the bid of $14,000 by the so-called committee of bondholders amounted to a sale which should be taken as the basis of this account. On the 6th of February, 1894, the holders of $20,700.00 of the bonds executed a paper-writing of which the following is a copy:

"To Edward L. Stewart, John B. Huckins, Alfred J. Robinson, Bangor, Me.

GENTLEMEN: We hereby constitute and appoint you our attorneys to represent us and act for us in all proceedings which, in your opinion, may be necessary to be taken for the protection of our interests as holders of bonds issued by the American Ice Co. of Bangor, Me., and secured by a deed of trust to the Eastern Trust & Banking Co. of Bangor, Me., dated December 2, 1889, of certain real estate in

Maine and in the city of Washington, and it is our desire that you take all steps necessary for the protection and preservation of said security by the payment of fire insurance and taxes, and that you may obtain as soon as possible a sale by said trustee of all the property covered by said mortgage.

In witness whereof we have hereunto affixed our hands and seals this sixth day of Feb'y, 1894."

See Exhibit G. B. C. No. 30 with the last deposition of George B. Canney.

No written direction to the trustee to sell appears in evidence, but the published notices of sale recite the fact that such a request had been made by the bondholders. A copy of such notice is attached to the first deposition of the witness Canney. On the 8th of
138 September Stewart and Huckins, two of the parties to whom the power of attorney was given, together with John Miller, styling themselves "a committee representing nearly all the holders of the bonds," delivered to the trustee a written request prescribing the manner and terms of the sale, which, by reason of previous postponements, was again to be attempted on the following day. This request and direction is contained in "Complainant's Exhibit 1," also attached to the said deposition of Canney.

The only evidence or the appointment or authorization of this committee appears in the testimony of John Miller, in his deposition filed April 29th, 1897, in which he states (page 9) that "the three persons named (including himself) were appointed a committee by the bondholders at a meeting they held in Bangor in September, 1894." It does not appear in what manner this committee was appointed or to what extent the holders of the bonds participated in the act, or what general or special authority was given to the committee. It is therefore difficult, if not impossible, to determine the extent of the authority, if any, with which this committee was clothed and whether it extended to a purchase of the property on behalf of the bondholders. If this authority is claimed under the power of attorney, it must be noted that that paper conferred no power of substitution by which Miller could lawfully act in the place of Robinson, and it appears that Miller was the bidder for the committee at the sale. It is still further a serious question whether that power of attorney can be construed to authorize a purchase of the property by the attorneys as such or as a committee, or whether it could be effective for that purpose, being an authority granted by or for the holders of but about four-sevenths of the bonds.
139 These questions may be unimportant, however, in view of the subsequent proceedings and treatment of the matter by the trustee and parties interested. No part of the terms of sale were complied with; no transfer of title, right, or interest was made by conveyance, memorandum of sale, or delivery of possession. In short, no steps were taken looking to the consummation of a sale of property. The trustee had taken possession of the property about October, 1893, and continued that possession as trustee until the

sale of March, 1897. The witness Canney, secretary of the trustee company, submits with his second deposition a transcript of the entries in the books of the trustee, beginning with March, 1894, and continuing to the time of the latter sale. The original entries in the cash book appear under the name and style of "American Ice Co. foreclosure account," and in the other record of that company the entries are made under the name and style of "American Ice Co. in ac. with Eastern Trust and Banking Co." (Exhibit G. B. C. No. 29, parts 1 & 2). After the sale of 1897 the form of the account was changed and subsequent entries were made under the name and style of "Bondholders American Ice Co. in ac. with Eastern Trust and Banking Co.;" this account evidently being for the purpose of adjusting the proceeds of sale and distribution of the same for the information of the bondholders, shows the receipts of the proceeds of that sale and of rents and the disbursements of the same (same exhibit, part 3). After the sale of 1897 the so-called committee of bondholders gave to the trustee a paper, a copy of which is contained in Exhibit G. B. C. No. 28, in which they state that the property of the American Ice Company has been sold, including certain tools and ice, for $20,000.00, and the amount paid in
140 to the trustee, and the committee undertake to instruct the trustee as to the disposition of the said money.

The mortgagor or grantor in the deed of trust has rights in this proceeding which cannot be overlooked, and its counsel contends that the said mortgagor is entitled to the benefit of the price for which the property was sold in 1897.

In view of the facts and conditions appearing in proof, I am of the opinion that this contention is well founded, and have therefore taken the amount for which the property was sold in 1897 as the basis of this account.

The trustee rented this property in the latter part of 1894, or in January, 1895, at the rate of $2,400.00 per annum, and received that rental for two years, amounting to $4,800, with which they are also charged in my account. After the sale in 1897 the trustee received a rebate or refund of insurance premiums paid and is charged with the same in this account.

I have allowed the trustee credit for all disbursements and expenditures made for the protection and preservation of the property beginning with March, 1894, such as taxes, insurance, an item of payments of shore rent, and some repairs. I have also allowed the costs and expenses incurred in the several attempts to sell in 1894. It appears in the case that in closing and adjusting the sale of 1897 it was thought prudent, if not necessary, to have whatever claim might exist or be asserted by the so-called committee of bondholders by reason of their bid for the property at the sale of September, 1894, released, and in some form, which does not clearly appear, that committee united in or assented to the sale and conveyance of March, 1897. The trustee in the account rendered claims credit for certain expenditures in this connection. These are not itemized, but
141 they appear in form of expenses incurred by the members of the committee and some charges of counsel for services which

are not detailed. So far as these seem to be equitable, I have allowed them in this account.

I have excluded certain claims for credit made by the trustee, such as fees paid for opinions of counsel in Washington and in Maine. Some of these items, at least, relate to the Washington property, which was included in the deed of trust; and, in this connection, I have also excluded an item of expenses of the president and another of the secretary of the trustee company for trips to Washington, which also related to the property here. Another item, under the head of legal expenses, $331.10, appears to relate to the suits at law brought by the trustee in this court, being Nos. 36903 and 36904, relating exclusively to the property in Washington.

Other items of credit claimed by the trustee are for costs and counsel fees expended or advanced in the present cause, and these, so far as this account is concerned, are excluded.

Under date of December, 1894, the trustee claims credit for an item of "Expenses, receiver, &c., 1,051.42." It appears that in October, 1893, a stockholder of the American Ice Company filed his bill of complaint in the circuit court of the United States in Maine alleging certain mismanagement on the part of officers of the said ice company and praying the appointment of a receiver to collect the debts and receive the assets and property of the corporation and, under the direction of the court, continue the management of its business until a sale or other disposition should be made. After a hearing the court made what is styled an "interlocutory
142 decree," appointing John R. Mason, of Bangor, Maine, receiver of the assets of the company in the district of Maine, with authority to continue shipments of ice, collect debts, &c., and the decree provided that the said receivership should terminate at the expiration of one calendar month from the approval of the bond of the receiver, unless otherwise thereafter ordered. The receiver's bond was approved on the 13th of October, 1894. On the 18th of November the court passed an order directing that upon the payment to the receiver of his charges and disbursements by the defendant corporation the receiver should be finally discharged from his receivership. On the 24th of February, 1894, the receiver filed a petition stating that the defendant corporation had refused payment of his charges and disbursements, and praying leave to lease the property of the defendant company on such terms as the court might adjudge.

The Eastern Trust and Banking Company was not a party to the original bill, and on the 26th of February, 1894, the complainant filed a motion for and obtained leave to amend by adding the said company as a party defendant and by inserting an averment setting forth the conveyance by the American Ice Company of its real estate in Maine to the Eastern Trust and Banking Company in trust to secure the $40,000.00 of bonds, &c.

At this point I note that although served with process the said Eastern Trust and Banking Company made no appearance then or thereafter in the said cause.

143 On the 17th of March the receiver filed a petition setting forth that in the ice-houses of the ice company there *was* about 9,000 tons of ice; that the Eastern Trust and Banking Company was a creditor of the said ice company in the sum of $3,250.00, and claimed a lien upon the said ice as security therefor by virtue of a mortgage, and praying leave to sell the said ice for the purpose of satisfying the claim of the said company. On the 23rd of March the court authorized the receiver to sell the said ice to pay costs and charges out of the proceeds and pay the balance into the registry of the court. In October following the receiver filed an account of his sales of ice and his costs, expenses, and charges, showing a balance in his hands of $2,874.19, which he paid into the registry of the court. The cause was then referred to a master to state the account of the receiver and for other purposes, and the master in a report filed thereafter allowed the receiver certain fees and commissions which had not been stated in the report and account filed by the receiver. The report of the master also set forth the fact that the American Ice Company during the season of 1892–'3 borrowed from the Eastern Trust and Banking Company certain monies upon two notes of the ice company which by contract of the parties were secured by a lien upon the ice of the said ice company.

The report further recited that the said ice was sold from time to time by the said ice company and payment from the proceeds of such sales made on account of the said notes, and that on the 4th of October, 1894, there was due and unpaid of the said notes the sum of $3,243.13. The master then undertakes to apportion
144 what he styles "the receiver's charges, fees, and commissions," and in which he in fact includes all the costs of that suit, including complainant's counsel fees and various other court costs and expenses and other charges, amounting in all to $1,123.42, and by some process of "marshalling," as he terms it, he apportions upon the real estate of the ice company $948.42 of that sum and the remainder upon the proceeds of the ice. He also states his own fee of $50.00, and apportions upon the real estate $40.00 of that sum.

Upon the hearing of the master's report the court made an order apportioning the said costs, charges, and expenses, adding thereto the fee of the clerk for receiving, keeping, and paying out the fund which had been deposited in the registry as the balance of the proceeds of sale of the ice, charging the real estate with $23.00 of the same (and the personal property $5.75), and also $40.00 of the fees of the receiver's counsel, making in all apportioned on the real estate $1,051.42.

If the reports of the receiver are taken as asserting possession by him of the real estate of the American Ice Company in Maine, it is contradicted by the testimony of the trustee through its secretary, to the effect that the trustee took possession of the said property directly after the assignment of the American Ice Company, which was made on the 13th of October, 1893, and I am constrained to interpret the reports of the receiver in that cause asserting possession as limited to the ice and other chattels. This being the fact, I

am unable to see how the real estate could be charged with any portion of the costs, charges, and expenses of the receiver.

145 The possession of the trustee may also explain the fact that the receiver, although authorized to lease the property, did not do so, while the trustee did lease the property and collected rent.

A fair illustration of the method of apportionment adopted by the master and court is found in the charge of almost the entire poundage of the clerk upon the fund deposited in the registry upon the real estate, although that fund was exclusively proceeds of sale of the ice and distributed finally to the complainant by virtue of a contract lien limited to the ice. It is contended that under the circumstances of that case the court was without power to diminish or impair the lien of the deed of trust of December, 1889, securing the bonds. Without discussing the issue of the power of the court in that respect, I am of the opinion that it was not the intention of the court to displace the lien of the deed of trust, but to subject the real estate to the charges recited in the final order only so far as the American Ice Company had an equity in the said realty, or, in other words, the charge was to be subject to the lien of the trust.

In Schedule A, I have stated the account of the trustee upon the basis of the views herein expressed, showing a balance in the hands of the trustee after allowing credit for the distribution made to the bondholders.

I have deducted from this balance, however, some further credits claimed by the trustee and which seem to have been allowed by the said committee of bondholders in an adjustment with the trustee, a copy of which is contained in "Exhibit G. B. C. No. 28," so far as these credits appear to be actual expenditures, but not in-

146 cluding the claim of $1,051.42. I have then treated the aggregate of these additional allowances as a further distribution to the holders of the bonds.

In Schedule B, I have made a statement showing the amount due on the bonds at the time of the said distribution, the payment made, and the balance remaining due and unpaid at that date.

Auditor's fees, $50.00.

JAS. G. PAYNE, *Auditor.*

March 20, 1900.

147 SCHEDULE A.

Account of Eastern Trust and Banking Company, Trustee.

DR.

March 5, 1897.		
To proceeds of sale of real estate included in deed of trust and sale of ice and tools..	20,000.00	
Deduct for ice and tools.....	3,500.00	
		16,500.00
Return of insurance premiums.....		350.92

March 16, 1896. To rents received.....		2,400.00	
June 30, " " ditto		600.00	
Jan. 23, 1897. " ditto		1,800.00	
		4,800.00	
Interest to February 27, 1897.....		182.25	
			4,982.25
			21,833.17

Cr.

By taxes paid prior to first sale.....	317.90	
insurance do.	555.99	
publication of notice of sale.....	204.36	
C. S. Pearl, auctioneer.....	30.00	
rent of room	2.00	
additional to auctioneer.....	25.00	
taxes to March 17, 1896.....	418.80	
insurance do.	1,080.84	
shore rent.....	100.00	
repairs.....	198.90	
taxes paid for 1896.....	206.88	
repairs.....	21.45	
insurance.....	507.74	
C. E. Field, expenses..	3.50	
team to Hampden.....	1.00	

148 *Account of Trustees*—Continued.

Brought forward		21,833.17

Cr.

By paid John Miller.....	50.00	
J. B. Huckins, expense.....	25.00	
B. C. Additon bill.....	10.00	
C. F. Woodward "	130.00	
C. E. Field "	75.00	
A. G. Kent, lease	50.00	
interest on monies advanced for taxes, insurance, and expenses from the respective dates to February 27, 1897	6* 387.73	
allowance to the trustee of 5 per cent. on gross amount of receipts.	1,091.66	
		5,493.75
Balance		16,340.42

[* In pencil in copy.]

CR.

By distributed to holders of bonds 39 per cent. of 35,000, principal of bonds.....		13,650.00
		2,690.42

CR.

By disbursements authorized by the committee of bondholders in their adjustment with the trustee and not allowed in the foregoing account, as follows:		
paid Edwards & Barnard.....	50.00	
E. B. Canney, expenses to Washington	80.00	
Davis & Bailey, 50.00 and 75.49...	125.49	
Costs and expenses in case 36903, at law.....	331.10	
B. F. Leighton, fees in same	300.00	
J. Cassidy, expenses to Washington.	48.19	
		934.78
		$1,755.64

JAS. G. PAYNE, *Auditor.*

149 SCHEDULE B.

Account to Show Amount Due on the Bonds Secured by the Deed of Trust.

At the time of the distribution of the proceeds of sale of the property in Maine, March 18, 1897, interest on the bonds from June 1, 1893, was due and unpaid, amounting to $22.80 on each $100.00 of bonds.

The amount due at the time of the said distribution on each $100.00 of the bonds was—

Principal.....	100.00	
Interest.....	22.80	
		122.80
The trustee distributed to the holders of the bonds at that time from the proceeds of sale under the deed of trust the sum of $13,950.00, being on each $100.00 of principal of bond....		39.00
		82.80
The bondholders are also chargeable with certain costs and expenses set forth in Schedule A, $934.78, being on each $100.00 of principal of bond.....		2.69
Balance due on each $100.00 of bonds March 13, 1897.		80.11

JAS. G. PAYNE, *Auditor.*

150 EASTERN TRUST & BANKING COMPANY
vs.
AMERICAN ICE COMPANY ET AL.

NOVEMBER 3D, 1899—11 o'clock a. m.

Hearing pursuant to notice.

Present: Mr. Leighton, for complainant, and Mr. Johnson, for the defendant.

JOHN MILLER, having first been duly sworn, testifies as follows:

By Mr. LEIGHTON:

Q. Mr. Miller, you have already testified in this case once before? A. Yes, sir.

Q. I show you exhibit marked "Copy, G. B. C. 28," attached to Mr. Canney's deposition. That paper purports to be a copy signed by yourself, Mr. Huckins, and Mr. Stewart, as a committee representing the bondholders under this trust. I want to know—according to that statement the property sold for $20,000.00, and that included the real property—ice and tools—I want to know whether this committee of bondholders considered that they had anything to do with the ice and tools? A. They had nothing to do with it. When we sold that property to the Consolidated Ice Company we sold the real estate for $16,500.00.

Q. And the balance of the $20,000.00 represented other property which you did not own? A. Yes, sir.

Q. In the sale, then, as made the real estate passed and such ice as happened to be on hand and the tools? A. They did.

151 Q. And as bondholders you had nothing to do with the ice and tools? A. Nothing at all.

Q. The cash which you received from that second sale, $16,500.00, represented the real estate? A. Yes, sir.

Q. Who was the purchaser of this property? A. The Consolidated Ice Company of New York.

Cross-examination.

By Mr. JOHNSON:

Q. Who was the lessee of the property? A. A syndicate in Bangor. I think they called themselve the Penobscot Ice Company.

Adjourned subject to notice.

152 *Order to Calendar.*

Supreme Court of the District of Columbia.

EASTERN TRUST & BANKING COMPANY
vs.
AMERICAN ICE CO. ET AL. } No. 17259.

The clerk will please calendar this cause for hearing at the next term of court.

B. F. LEIGHTON.

April 24, 1900.

Calendared as ordered, April 24, 1900, by clerk.

Motion to Strike Case from Calendar.

Filed May 14, 1900.

In the Supreme Court of the District of Columbia.

EASTERN TRUST & BANKING COMPANY
vs.
AMERICAN ICE COMPANY ET AL. } No. 17259. In Equity.

Now come the defendants The American Ice Company and William G. Johnson, assignee, and move the court to strike this case from the trial calendar, and for leave to these defendants to take testimony, and for cause for said motion show as follows:

1. That this cause came on for final hearing and was terminated by a final decree on the 16th day of March, 1898. Appeals were taken by both complainant and defendants from this decree, and on February 28, 1899, the Court of Appeals reversed this final decree, and by its mandate filed herein March 31st, 1899, remanded the cause to this court for further proceedings.

153

2. Thereafter, under a stipulation of counsel filed July 6, 1899, the depositions were taken in behalf of complainant in Bangor, Maine.

3. On September 27, 1899, an order was passed referring the cause to the auditor, but before proceedings thereunder were completed the said order of reference was modified by an order passed herein on the seventh of February, 1900, under and by virtue of which the auditor undertook to ascertain and report to the court the amount due and unpaid on the bonds, and his report thereunder was filed March 23, 1900.

4. That no time was fixed by the court within which complainant was required to take its testimony; that complainant took testimony before the auditor in the said reference, but never announced its testimony as closed, and that no time was limited to defendants within which to take testimony after the closing of complainant's testimony.

5. That on the 24th of April, 1900, without any notice to defendants or their counsel, complainant's counsel entered an order in Order Book No. 17, folio 318, directing the clerk to calendar this cause for the next term of this court.

154 6. That defendants had no notice nor knowledge of such calendaring of said cause for hearing until the ninth day of May, 1900, when said cause was called for final hearing.

7. That at the time said cause was placed on the calendar the same was not at issue and ready for hearing, and that defendants were entitled under the rules of court to have time to offer evidence in their behalf after the closing of complainant's case, and to notice of the cause being calendared, neither of which has been accorded, and that only one day elapsed between the time for filing exceptions to the auditor's report and the calendaring of said cause.

8. That by the opinion and judgment of the Court of Appeals in this case no sale can be made of the premises herein described until after the case of The United States *vs.* Morris *et al.*, No. 10306 in equity, shall have been decided, and the said cause is still pending and undecided in this court under the mandate of the Supreme Court of the United States remanding said cause to this court in general term for further proceedings.

That in the said cause of The United States *vs.* Morris *et al* the title, rights, and interests of all parties to this property were attacked by the United States, and said suit was defended wholly at the expense of the defendant assignee herein, the complainant never having appeared in said cause or taken any part therein; that all the beneficial results of said proceeding and the expenses incurred therein, including the services of counsel, will, in the event of a decree for sale herein, enure greatly, if not wholly, to the benefit of complainant; and before the complainant shall be entitled

155 to a decree of foreclosure and sale, evidence should be adduced and an account should be taken of the said expenses and services, and a proper charge therefor made against complainant.

9. That by the restricted terms of the order of reference to the auditor herein such matters are not cognizable by the auditor, whose authority was limited to the ascertainment of the amount due upon the bonds secured by the mortgage in these proceedings described.

CARLISLE & JOHNSON,
Solicitors for Defendants.

Decree of Sale, &c.

Filed May 15, 1900.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, Complainant, *vs.* AMERICAN ICE COMPANY ET AL., Defendants. } Equity. No. 17259, Docket No. 40.

This cause came on to be further heard at this term of court, on the mandate of the Court of Appeals herein, and the auditor's report, and the pleadings and evidence taken in said cause, and was argued by counsel; upon consideration whereof it is, this 15th day of May, A. D. 1900, adjudged, ordered, and decreed that the decree of sale heretofore passed in this cause be, and the same is hereby,
156 set aside, annulled, and for naught held, and in lieu thereof it is hereby adjudged, ordered, and decreed as follows, to wit:

First. That the auditor's report filed herein on the 23d day of March, A. D. 1900, be, and the same is hereby, ratified and confirmed.

Second. That The Eastern Trust and Banking Company, complainant herein, be, and it hereby is, authorized and empowered to take immediate possession of the property in these proceedings described, and that the defendants and each of them be, and they hereby are, perpetually enjoined from interfering with the said complainant in any manner in respect thereto, and that the defendant Wm. G. Johnson, assignee of the American Ice Company, shall surrender and yield peaceable possession thereof unto the said complainant or its attorney of record upon demand being made upon him therefor.

Third. That there is still due on account of the bonded indebtedness secured by the deed of trust or mortgage in these proceedings described the sum of $28,038.50, with interest from the 13th day of March, A. D. 1897, and that the complainant herein, the said Eastern Trust and Banking Company, as trustee under said mortgage or deed of trust in these proceedings described, is entitled to have the same foreclosed and to have all the right, title, and interest of the said defendants, The American Ice Company and Wm. G. Johnson, assignee, in his character of assignee, or either of them, in and to the property therein described sold for the purpose of paying the bonded indebtedness secured by said deed of trust, and
157 that Benjamin F. Leighton and Calderon Carlisle are hereby appointed trustees to sell all the right, title, and interest of the parties to this cause in and to all that certain piece, parcel, and lot of real estate situate in the city of Washington, District of Columbia, more particularly described as follows, to wit:

All that piece or parcel of land, with the improvements thereon, lying in the city of Washington, District of Columbia, and being opposite square numbered two hundred and seventy (270), running thence southerly with the west line of Thirteenth street to the channel of the Potomac river; thence westerly with said channel to a point opposite the southwest corner of said square numbered two hundred and seventy; thence due north to the said southwest corner of said square two hundred and seventy, following the eastern line of what is alleged to be Thirteen-and-a-half street; thence with the southern line of said square two hundred and seventy two hundred and fifty-five (255) feet one (1) inch to the place of beginning; together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand, either at law or in equity or otherwise however, of the said parties to this cause.

And the course and manner of their proceeding shall be as follows: They shall first give a bond, to be approved by the court in the sum of five thousand dollars, conditioned for the faithful performance of their duties as such trustees, and shall give at least ten days' previous notice, in one or more daily newspapers published in the city of Washington, in said District, and such other notice
158 as they may think proper, of the time, place, manner, and terms of sale; which terms of sale shall be as follows, to wit: One-third of the purchase-money in cash, and the balance in two equal instalments at one and two years, secured by the promissory notes of the purchaser or purchasers, with interest thereon from the day of sale, and a good and valid deed of trust, to the satisfaction of the trustees, on the property sold, or all cash, at purchaser's option; and as soon as may be convenient after such sale or sales the trustees shall return to this court a full and particular account of the same, with an affidavit of the truth thereof and of the fairness of such sale or sales annexed; and upon full compliance by the purchaser or purchasers with the terms of sale and upon the final ratification of such sale or sales by the court, and not before, the said trustees, by good and sufficient deed, to be executed and acknowledged in accordance to law, shall convey to the purchaser or purchasers of said property and to his, her, or their heirs the property to him, her, or them sold, free, clear, and discharged of all claim of the parties to this cause or of any person or persons claiming by, from, or under them, and the said trustees shall account to this court for the money arising from such sale or sales, and the notes which may be taken for the same shall be disposed of under the direction thereof, after deducting therefrom the costs of this suit and such commission to the trustees as the court shall see proper to allow in consideration of the care, skill, and fidelity with which they shall appear to have discharged the trust.

Fourth. It is further adjudged, ordered, and decreed that
159 in the event the proceeds arising from the sale hereinbefore decreed be insufficient to pay and discharge in full said

bonded indebtedness, then, and in such an event, it shall be the duty of the defendant, the said Wm. G. Johnson, and he is hereby directed to pay unto the said trustees in this cause the sum of $3,000, paid by the said defendant insurance companies to him, under a certain stipulation in these proceedings filed, or so much thereof as may be necessary to pay said deficit, not to exceed in any event the sum actually paid to him by said companies, to wit, the sum of $3,000, and the same shall be applied to the said trustees as may be directed by the further order of the court in the premises.

By the court:

JOB BARNARD, *Justice.*

Appeal.

Supreme Court, District of Columbia.

EASTERN TRUST & BANKING CO. *vs.* THE AMERICAN ICE CO. ET AL. } 17259. Equity.

The clerk will please enter an appeal to the Court of Appeals by the American Ice Company and William G. Johnson, assignee, from the decree passed May 15, 1900, and issue citation.

CARLISLE & JOHNSON, *For Def'ts.*

Appeal, as ordered, entered.
BY CL'K.

1900, 6, 2.

160 Filed Jun- 5, 1900. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY, a Corporation, *vs.* AMERICAN ICE COMPANY, a Corporation. } No. 17259. In Equity.

The President of the United States to Eastern Trust and Banking Company, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal entered in the supreme court of the District of Columbia on the 2nd day of June, 1900, wherein The American Ice Company and William G. Johnson, assignee, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this second day of June, in the year of our Lord one thousand nine hundred.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 5th day of June, 1900.

B. F. LEIGHTON,
Attorney for Appellee.

161 *Memorandum.*

June 2, 1900.—$100 deposited in lieu of appeal bond by leave of court.

Stipulation.

Filed July 5, 1900.

In the Supreme Court of the District of Columbia.

THE EASTERN TRUST & BANKING COMPANY
vs.
AMERICAN ICE COMPANY ET AL. } No. 17259. Equity.

It is hereby stipulated and agreed by and between complainant and defendants that the transcript of record on appeal to the Court of Appeals taken by said defendants on the 2nd day of June, 1900, shall consist of the printed record heretofore used in said Court of Appeals on the former appeals herein, to which shall be added the following: September 22, 1899, deposition of George B. Canney; September 27, 1899, order referring cause to auditor; February 7, 1900, order amending reference to auditor; March 23, 1900, report of auditor without vouchers; April 24, 1900, order to calendar (Order Book 17, page 318); May 14, 1900, motion to strike from calendar; May 15, 1900, decree for sale; June 2, 1900, appeal, citation, etc.

B. F. LEIGHTON,
Sol'rs for Complainant.

CARLISLE & JOHNSON,
Sol'rs for Defendants.

162 *Order Extending Time, &c.*

Filed July 18, 1900.

In the Supreme Court of the District of Columbia.

EASTERN TRUST AND BANKING COMPANY
vs.
AMERICAN ICE COMPANY ET AL. } No. 17259. In Equity.

On motion of Calderon Carlisle, solicitor for the defendant William G. Johnson, assignee, it is by the court, this 18th day of July,

A. D. 1900, ordered that the time for preparing and filing the transcript on the last appeal taken in this cause to the Court of Appeals of the District of Columbia be, and the same is hereby, extended until the first day of August, 1900.

A. B. HAGNER,
Asso. Justice.

I consent.
B. F. LEIGHTON,
Sol'r for Complainant.

163 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 84, inclusive, to be a true and correct transcript of the record, as per stipulation of counsel filed herein, copy of which is made part hereof, in cause No. 17259, equity, wherein Eastern Trust and Banking Company is complainant and American Ice Company *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 31st day of July, A. D. 1900.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1013. American Ice Company and Wm. G. Johnson, assignee, appellants, *vs.* Eastern Trust and Banking Company. Court of Appeals, District of Columbia. Filed Jul- 31, 1900. Robert Willett, clerk.

126 TUESDAY, *December* 18*th*, *A. D.* 1900.

AMERICAN ICE COMPANY and WILLIAM G. JOHNSON, Assignee, Appellants,
vs.
EASTERN TRUST AND BANKING COMPANY. } No. 1013.

The argument in the above-entitled cause was commenced by Mr. Wm. G. Johnson, attorney for the appellants, and was continued by Mr. B. F. Leighton, attorney for the appellee, and was concluded by Mr. Wm. G. Johnson, attorney for the appellants.

127 AMERICAN ICE COMPANY and WILLIAM G. JOHNSON, Assignee, Appellants,
vs.
EASTERN TRUST AND BANKING COMPANY. } No. 1013.

Opinion.

Mr. Justice MORRIS delivered the opinion of the court:

This case was before us on a previous appeal, the report of which appears in 14 D. C. App. 304: and a report of another phase of the controversy between the parties appears at an earlier date in 6 D. C. App. 375: and 169 U. S. 295. In view of the full statements contained in those reports, it is unnecessary to repeat here the facts and circumstances of the controversy further than to say that the proceeding was commenced by the filing of a bill to foreclose a mortgage, or rather a deed of trust given by way of mortgage; and that the previous appeal was from a decree of the supreme court of the District ordering a sale of the mortgaged property, but denying other relief prayed by the complainant in the cause, the present appellee. This court reversed that decree, and remanded the cause for an accounting to be had of the amount due and payable of the mortgage debt, as preliminary to a decree of foreclosure; and also, inasmuch as the mortgaged property, being wharf property in the city of Washington fronting on the Potomac river, was within the limits of a district or territory to which the United States at that time, in a suit generally known as the Potomac Flats case, was seeking to establish a paramount title, a suit then pending in the Supreme Court of the United States and undecided, this court gave the following direction:

"The sale of the property, however, under any decree that may be passed, should not be allowed to be made until after the case of Morris and others *v.* United States, known as the Potomac Flats case, now pending in the Supreme Court of the United States, shall have been decided; for otherwise the sale of the property made subject to the final decision of that case could not be other than a mere speculation, and would most likely result in obtaining no more than a mere nominal sum."

When the cause remanded went back to the supreme court of the

District, it was referred to the auditor of that court to state the complainant's account as trustee under the deed of trust, some funds having already been realized from the sale of property in the State of Maine, and to ascertain and report the amount of the indebtedness yet due and unpaid under the deed. This the auditor proceeded to do, and he found a balance of $1,755.64 yet remaining in the hands of the trustee and applicable to the payment of the indebtedness secured by the deed; and the amount yet due under the deed of the indebtedness thereby secured he found to be $28,038.50. No exception was taken by either side to the report; and the time allowed by the rules of the court for the filing of exceptions having elapsed, the solicitor for the complainant caused the case to be placed on the calendar of the court for the ensuing monthly term. This is claimed to have been done without notice to the solicitor for the defendants; and thereupon motion was made on their part to strike the cause from the calendar, for which several grounds were assigned, among others, that the Potomac Flats case was still pending undecided in the supreme court of the District under the mandate of the Supreme Court of the United States remanding it for the ascertainment of some rights supposed to be in some of the parties thereto. It does not appear from the record whether any direct action was taken by the court on this motion; but the cause went on to argument, and was argued by counsel on both sides, and thereupon a final decree of foreclosure was entered.

This decree, after vacating the prior decree of foreclosure which we had reversed on the former appeal, adjudged: (1) That the auditor's report should be ratified and confirmed; (2) that the Eastern Trust and Banking Company was entitled to take immediate possession of the mortgaged property, and that such possession should be surrendered to it; (3) that there was due under the mortgage the sum of $28,038.50, with interest from March 13, 1897, and that the mortgaged property should be sold to pay this indebtedness. Trustees were appointed to make the sale, and the usual directions were prescribed for their conduct. It was further provided that, in the event of the insufficiency of the proceeds of sale to satisfy the mortgage debt, certain insurance money to the amount of $3,000, collected by William G. Johnson, as assignee, and which was mentioned and provided for on the former appeal, or so much thereof as might be necessary, if the whole were not necessary, should be paid by Johnson to the said trustees to be applied by them under the orders of the court.

From this decree The American Ice Company and William G. Johnson, assignee, the defendants in the suit, have prosecuted the present appeal.

There are five assignments of error: (1) That the court below erred in not striking the case from the calendar, and in proceeding to a decree; (2) that there was error in decreeing that there was due upon the bonds secured by the deed of trust the sum of $28,038.50, with interest from March 13, 1897; (3) that it was error to decree a sale of the real estate for the payment of this indebtedness; (4) that it was error to decree that the insurance money to the

amount of $3,000 was liable for any deficiency arising from the sale of the real estate; (5) that it was error not to have dismissed the bill.

1. With reference to the first of these assignments, it seems to be sufficient to say that, in so far as it refers to the practice of the court below, that practice is wholly immaterial on this appeal. If there was irregularity in the matter of calendaring the cause, which is by no means certain, it was waived or cured by the appearance of the appellants in the argument of the cause and their participation therein. They had their day in court, and they were not prejudiced by any failure of notice to appear. And so far as this assignment of error has reference to supposed imperfections in the audit or in the scope of the reference to the auditor, it would have been easy to cure them either by exceptions to the auditor's report, or by testimony before the auditor, or by application to the court to enlarge
128 the scope of the reference, no one of which was sought to be done. It is too late for the appellants to complain in this court of that which was their own failure in the court below. We find no merit in this first assignment of error.

2. In the second assignment of error it is complained that the court below was wrong in its adjudication that there was due to the complainant upon the bonded indebtedness secured by the deed of trust the sum of $28,038.50, with interest from March 13, 1897. The ground of this complaint is that it appears from the auditor's report that there is in the hands of the trustee the sum of $1,755.64 applicable to the payment of the indebtedness; and that, if this were so applied, the indebtedness would be reduced to that extent, that is, to the sum of $26,282.86. Controversy on this point is terminated by the agreement of counsel for the appellee in his brief and in open court to have the amount of the indebtedness so reduced. The decree, therefore, will be modified so as to adjudge the indebtedness due to be the sum of $26,282.86.

3. The third assignment of error is that the court should not have decreed the sale of the real estate mentioned in the proceedings in order to pay the alleged bonded indebtedness. And the argument here is that substantially the same conditions yet exist as existed at the time of our former decision with reference to the Potomac Flats case, when we held that, under any decree that should be passed, no sale of the property should be allowed until after the decision of that case, then pending in the Supreme Court of the United States.

The Potomac Flats case was decided by the Supreme Court of the United States on May 1, 1899; and it was there determined that the fee-simple title to the property involved therein, which embraced the real estate sought to be conveyed by the deed of trust mentioned in this case, was in the United States. But it was recognized in the opinion of the court, as it had been by the act of Congress under which the suit had been instituted, that the occupants of the wharves and other property embraced in the suit might have rights which should not be taken without just compensation; and accordingly the cause was remanded to the supreme court of the District of Columbia in order that there should be an inquiry into such rights and inter-

ests and a valuation of them. At what time the mandate of the Supreme Court of the United States went down to the supreme court of the District of Columbia, we are not advised; but it could not have been very long delayed, for the Supreme Court of the United States adjourned within less than a month after the announcement of the decision. After being remanded, however, the Potomac Flats case seems to have been consigned to the limbo of dead issues, and no attempt, at all events no serious attempt, seems ever to have been made by any one to resuscitate it from its condition of suspended animation. We understand that neither the Attorney General of the United States, nor any one else acting for the United States, has sought to take possession of the wharf property involved in that suit, or has taken any steps to have a valuation of the rights of the occupants thereof; and no one acting on behalf of the occupants has taken any steps for that purpose. All the parties seem to be willing to permit the matter to rest indefinitely and until some emergency arises to demand energetic action, which may possibly be in the remote future.

The American Ice Company, one of the appellants in this case, was a party to the Potomac Flats case, and participated in the conduct of that litigation until the final decision by the Supreme Court. The Eastern Trust and Banking Company, the appellee here, was not a party to that suit; and it is argued here on behalf of the appellants that it could not now be permitted to intervene in it in any manner. And the argument is further, that, until the rights of the American Ice Company shall have been determined in the Potomac Flats case, or, in other words, until the American Ice Company thinks proper to move in the Potomac Flats case for a valuation of its interest, which, of course, it may postpone forever, if it chooses, there can be no sale of that interest, and no decree should be rendered for such a sale. But the very statement of such a proposition as this is sufficient to discredit it. Were we to adopt it as the law of this case as now developed, it would simply be an invitation to the American Ice Company to take advantage of its own inactivity in order to perpetuate a wrong on the appellee. What the valuation of its interest in the premises would prove to be, if actively pressed to a determination, we cannot, of course, anticipate; but it may be questioned, from the record of this litigation, whether it would be sufficient to satisfy the claims of the appellee and its other creditors. The American Ice Company, therefore, has probably no motive of self-interest to move for the ascertainment of the value of its interest in the property in controversy; and it does not seem to be eager to admit the appellee to a share in the work of inquiry into that matter. It seems never to have called upon it for assistance, or requested it to contribute to the expense; and yet one of the grounds of complaint here on the part of the appellants is that the appellee has not contributed to the cost of that litigation.

The direction in our former opinion in this case, that there should be no sale until after the determination of the Potomac Flats case, was manifestly intended for the benefit of all the parties to this cause, and most of all for the benefit of the appellants. But if the

appellants by their continued inaction refuse to procure the desired determination of their interest, and at the same time refuse to put the appellee in such position as that it may act in its place in that case, it cannot thereby be permitted to defeat the just rights of the appellee. And it cannot complain if the appellee is thereby remitted to the speedy execution of the mortgage to which it is entitled. We have no doubt that, if the appellants persist in their course of inactivity in the Potomac Flats case, there will be no difficulty in substituting a purchaser at a sale under a decree in this case in its place and stead, to ascertain the value of the interest in controversy. That interest can be ascertained before such sale by the action of the appellants or with their concurrence; after the sale it can be ascertained without such concurrence.

129 A condition of things somewhat similar to this was developed in the case of Bryan *v.* May, 9 App. D. C. 383, where we remanded a cause in order that a bill of complaint should be amended and a somewhat indefinite interest made definite. A sale of the interest to which the complainant was entitled was postponed until the extent of that interest could be ascertained. Instead of having this interest ascertained, the defendant adopted a policy of obstruction; and a decree was thereupon rendered to expose his unascertained interest for sale, and we approved that decree. May *v.* Bryan, 16 App. D. C. 556. What was said in that case is not inapplicable to the case now before us.

We are of opinion, therefore, that the third assignment of error is without merit.

4. With reference to the fourth assignment, namely, that it was error to hold that the insurance money, amounting to $3,000, should be liable for any deficiency arising from the sale of the real estate, it is conceded by the appellants that the question was fully disposed of on the former appeal (14 App. D. C. 337), adversely to their contention; and that the point is now made only for the purpose of having the question reserved in the event of an appeal to the Supreme Court of the United States. The assignment, therefore, needs no further consideration from us at this time.

5. The fifth and last assignment is that the bill of complaint should have been dismissed. It is not usual to consider a general assignment of this kind without some specification. It is true that there is in the brief for the appellants a suggestion in this connection that, in view of the sale or sales which had been made of property in Maine, the appellee should not now be permitted to have recourse to the property in this District. But, as the defendants have been given the benefit of all the sales in Maine and credited with the highest amount realized, and as that amount falls far short of discharging the indebtedness, it is not apparent why the mortgagee should be debarred from recourse to the other property covered by the mortgage. But this point does not seem to be seriously insisted on here by the appellants, and the assignment of error is no more than a merely formal assignment.

From what we have said it follows in our opinion that the decree of the supreme court of the District of Columbia here appealed from

is right and just, and that it should be affirmed, with costs, with the modification, however, that the amount of the indebtedness secured by the mortgage is reduced to the sum of $26,282.86. Accordingly the cause will be remanded to that court, with directions to carry its said decree, so modified, into effect.

And it is so ordered.

130 WEDNESDAY, *January 9th, A. D.* 1901.

AMERICAN ICE COMPANY and WILLIAM G. Johnson, Assignee, Appellants, vs. EASTERN TRUST AND BANKING COMPANY. } No. 1013, January Term, 1901.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said supreme court, in this cause, be, and the same is hereby, affirmed with costs; with the modification, however, that the amount of the indebtedness secured by the mortgage is reduced to the sum of $26,282.86, and that this cause be, and the same is hereby, remanded to the said supreme court, with directions to carry its said decree, as so modified, into effect.

Per MR. JUSTICE MORRIS.

January 9, 1901.

131 THURSDAY, *April 4th, A. D.* 1901.

AMERICAN ICE COMPANY and WILLIAM G. JOHNSON, Assignee, Appellants, vs. EASTERN TRUST AND BANKING COMPANY. } No. 1013.

On motion of Mr. Calderon Carlisle, attorney for the appellants in the above-entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States on giving bond in the sum of two hundred and fifty dollars.

132 Know all men by these presents, that we, American Ice Company and William G. Johnson assignee of American Ice Company, as principal, and American Bonding and Trust Company of Baltimore City, as surety, are held and firmly bound unto Eastern Trust and Banking Company in the full and just sum of two hundred and fifty (250) dollars to be paid to the said Eastern Trust and Banking Company, its certain attorney, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of April, in the year of our Lord one thousand nine hundred and one.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said court, between the said American Ice Company and William G. Johnson assignee of said American Ice Company and the said Eastern Trust and Banking Company, a decree was rendered against the said American Ice Company and William G. Johnson assignee of said American Ice Company and the said American Ice Company and William G. Johnson assignee of said American Ice Company having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Eastern Trust and Banking Company citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington within 30 days from the date thereof,

Now, the condition of the above obligation is such, that if the said American Ice Company and William G. Johnson assignee of said American Ice Company shall prosecute their said appeal to effect, and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

AMERICAN ICE COMPANY, [SEAL.]
By WM. G. JOHNSON, *Assignee.* [SEAL.]
WM. G. JOHNSON, [SEAL.]
Assignee American Ice Company.
THE AMERICAN BONDING & TRUST COMPANY OF BALTIMORE CITY, [SEAL.]
By L. O. DE LASHMUTT, *Attorney-in-Fact.*

[Seal American Bonding & Trust Company of Baltimore City.]

Sealed and delivered in the presence of—
OSCAR LUCKETT.

Approved by—
R. H. ALVEY,
Ch. Justice of Court Appeals, District of Columbia.

[Endorsed:] No. 1013. American Ice Company and William G. Johnson, assignee, appellants, *vs.* Eastern Trust and Bonding Company. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Ap'l 19, 1901. Robert Willett clerk.

133 UNITED STATES OF AMERICA, *ss:*

To Eastern Trust and Banking Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein American Ice Company and William G. Johnson, assignee, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the appellants, should

not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 19th day of April, in the year of our Lord one thousand nine hundred and one.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service this 19" day of April, 1901, is accepted.

B. F. LEIGHTON,
Attorney for Eastern Trust & Banking Co.

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 19 1901. Robert Willett, clerk.

134 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 133 inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of American Ice Company and William G. Johnson, assignee, appellants *vs.* Eastern Trust and Banking Company No. 1013, January term, 1901, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 23d day of April A. D. 1901.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No., 18,152. District of Columbia Court of Appeals. Term No., 95. American Ice Company and William G. Johnson, assignee, appellants, *vs.* Eastern Trust and Banking Company. Filed May 11", 1901.

APPENDIX TO RECORD.

Filed Nov. 26, 1902.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1902.

No. 25.

AMERICAN ICE COMPANY AND WILLIAM G. JOHNSON, ASSIGNEE, APPELLANTS,

vs.

EASTERN TRUST AND BANKING COMPANY, APPELLEE.

APPENDIX TO RECORD.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 95.

AMERICAN ICE COMPANY AND WILLIAM G. JOHNSON, ASSIGNEE, APPELLANTS,

vs.

EASTERN TRUST AND BANKING COMPANY, APPELLEE.

STIPULATION OF COUNSEL.

It is hereby stipulated between counsel for appellants and appellee that the following copy of the opinion of the Court of Appeals of the District of Columbia rendered on the decision of the first appeal in this case to that court shall be taken and considered as part of the record herein on this appeal.

WILLIAM G. JOHNSON,
Counsel for Appellants.

BENJAMIN F. LEIGHTON,
Counsel for Appellees.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

EASTERN TRUST AND BANKING COMPANY

vs.

AMERICAN ICE COMPANY.

AMERICAN ICE COMPANY

vs.

EASTERN TRUST AND BANKING COMPANY.

Nos. 800 and 801. Submitted January 19, 1899.
Decided February 28, 1899.

Mr. Chief Justice ALVEY delivered the opinion of the Court:

These are cross-appeals; the first by the Eastern Trust and Banking Company, and the second by the American Ice Company, and William G. Johnson, assignee of the latter company, from a decree passed on the bill filed by the first named appellant, for the purpose of foreclosure by sale of certain mortgaged premises, situate in the City of Washington, and for the appointment of a receiver, and also for an account of rents and profits; and for certain insurance money received by the defendant William G. Johnson, as the assignee of the defendant Ice Company.

Both of the corporations concerned are corporations of the State of Maine, and the mortgage was made in that State, and was made to embrace and operate upon certain real estate situated in the County of Penobscot, State of Maine, and also certain real estate situate in the City of Washington, District of Columbia. The mortgage or deed of trust was made by the American Ice Company to the Eastern Trust and Banking Company, to secure the payment of certain bonds, amounting in the aggregate to $40,000, payable in several instalments of $5,000 each, in from three to ten years from the 1st of December, 1889. The bonds were all made payable to the complainant, the Trust Company, or bearer, and were by it, in accordance with the authority given, sold and delivered to various persons, for full value before maturity.

The property embraced in this mortgage or deed of trust, made on the 2d of December, 1889, to secure the bonds so issued, consisted of certain real estate in the county of Penobscot, Maine, improved by ice houses, and the engines, machinery and appliances usually employed in harvesting ice in that State; and also of certain real estate, that it claimed to own, in the City of Washington, District of Columbia, located opposite square No. 270 of said city, and being entirely within the limits of the bed of the Potomac River. This latter mentioned property was improved by wharf and ice houses used for storing and distributing the ice gathered in the State of Maine, and shipped to this District for sale. The mortgage or deed of trust contained the provision usually found in deeds of the kind, that the grantor therein should retain possession of the premises conveyed until default in the payment of the principal or interest of said indebtedness, or in the maintenance of insurance, or the payment of taxes upon said real estate. It was further provided, that if default should be made by the American Ice Company in the payment of the said bonds or any of them, as they became due and payable, and such default should continue for ninety days, then the whole amount of principal and interest thereon remaining unpaid, should be deemed immediately due and payable, and it should be lawful for the trustee, the complainant, to enter and take possession of said property for the purpose of sale.

The sale of the property as directed by the mortgage or deed of trust was required to be made at public auction in the City of Bangor, upon such terms as to credit, partial credit, and security for payment, as the grantee in the deed might think proper or expedient, having first given public notice of the time and place of the sale or sales, by advertisement printed not less than once a week for four successive weeks in one or morenewspapers printed and published in the City of Bangor and also in the City of Washington. It also provided that the trustee should have the right to adjourn the sale or sales from time to time, in its discretion, giving reasonable notice of such adjournment, etc., and after such adjournment to make the sale at the time and place designated by the notice of adjournment, and that no

other notice should be required. The trustee was authorized to convey to the purchaser the premises sold, and to apply the proceeds of sale, first, to defray the expenses of sale, together with its just and lawful charges for services and expenses, including reasonable allowance for attorney and counsel fees, and also all advances and expenses reasonably incurred by the trustee in operating, maintaining, or managing the property or business of the Ice Company while in possession thereof, and all payments made by the trustee for taxes, assessments, insurance and other proper charges upon said property; and the balance of such proceeds to be paid over ratably to and amongst the parties holding the bonds and coupons, etc. And, further, that the bondholders, or any number of them, or any person in their behalf, should have the right to purchase at any such sale made as aforesaid.

The mortgage or deed of trust contains a specific covenant, that the American Ice Company, the mortgagor, would and should pay all taxes and assessments, etc., and would and should keep said mortgaged property *at all times insured* in such insurance companies as might be approved by the trustee, in such amounts as *should reasonably protect all the insurable property*, payable, in case of loss, to the trustee as its interest might appear. "In case of loss the insurance money may *be applied by the trustee toward the renewal of, or addition to, the property destroyed or injured*, or, at the the option of the trustee, the money may either be retained and invested in such securities as it approves, as a sinking fund for the redemption of the bonds when due, or be applied to the payment of the principal of such of the bonds as may be at the time due and unpaid," etc.

The first instalment of the bonds secured by the mortgage fell due in December, 1892, and was paid, together with the interest then accrued and due upon all of the bonds. The next instalment became due in December, 1893, but was not paid at maturity, nor was the interest paid. Before this default, but after the American Ice Company had become insolvent, that is to say, on the 13th of October, 1893, the Ice Company made a general assignment of all its property and effects to the defendant, William G. John-

son, for the benefit of *all its creditors*. This assignment was accepted by Johnson, and by virtue thereof he leased the property of the Ice Company, located in the City of Washington, being the property embraced in the mortgage or deed of trust, to Edward M. Willis, on the 29th of January, 1894, for one year, for a rental of $130 per month. The rent accruing until the property was burnt down was received by the assignee Johnson, who still holds the same subject to the final decree in this case. All the improvements upon the property were destroyed by fire on the 11th of February, 1896.

After the default in payment in principal and interest and upon request of the requisite number of the bondholders, the mortgaged property, as well that located in the City of Washington as that located in Penobscot County in the State of Maine, was advertised to be sold at public auction in the City of Bangor, on the 9th of May, 1894, and in the advertisement it was stated that the terms and conditions of sale would be announced by said trustee at the time and place of sale. The terms were announced, but no sufficient bid being received at that offer. the sale was postponed to the 8th of June, of the same year, to take place at the place where the first offer was made. Notice of this postponement appears to have been duly given. In accordance with the notice of postponement, the property was offered a second time, but no adequate bid was received, and the sale was again postponed to the 8th of September, 1894, upon due notice thereof given. At this last postponed offer of the property, it appears, bids were received for both parcels of property, that located in Maine, and that located in the City of Washington, and that both properties were bid in by a committee representing the bondholders. The property in Maine was struck off to such committee, as the highest and best bidders, at and for the sum of $14,500 (*sic*)*; and that the Washington property was struck off to the same bidders at and for the sum of $14,000 (*sic*)†; but that the sale of the latter property has never been perfected, and has been abandoned by the committee, and consequently it still re-

* $14,000 in record (Rec., pp. 5, 66, 81).
† $14,750 in record (Rec., pp. 5, 66).

mains in the trustee under the deed of trust, undisposed of, and liable to sale for the benefit of the bondholders. There was no conveyance made by the trustee company to the committee of bondholders as purchasers of the Maine property, and the same was held by the trustee, and was rented out, and the rents received by it, until March, 1897, when the property was sold to the Consolidated Companies of New York, for the sum of $16,500; and the committee of bondholders and the Trust Company joined in the conveyance to make title. The rents and profits of the property, in the meantime received by the Trust Company, have been accounted for. And the proceeds of the sale made to the Consolidated Companies, together with the rent received, after deducting what are claimed as proper expenses, disbursements, and commissions, for administration, have been distributed to the bonds *pro rata*, paying 39 per cent. of the face of the bonds, leaving 61 per cent. still due and owing, besides interest. This is according to the statement of the complainant, the Trust Company, the correctness of which, however, is in several respects controverted by the defendants.

Some time after the general assignment of the Ice Company to the defendant Johnson, the latter as assignee took out several policies of insurance on what he claims as his own interest, as such assignee, in the property located in Washington, to the amount of $3,000. The improvements on the property, as we have already stated, were totally destroyed by fire, in February, 1896. The insurance money has been paid over to Johnson as assignee, who was at the time of the insurance, and for some time thereafter had been, in the possession of the property. The premiums on the policies of insurance were paid out of the assets of the American Ice Company. The money received on the policies is held by the assignee Johnson, to abide the final determination of this case.

The bill of complaint, after setting out at length and in great detail, the alleged facts of the case, prayed: (1), For the appointment of a receiver to take charge of the property in this District; (2), That the defendant Johnson, as assignee of the Ice Company, be required to account to the complain-

ant, the Trust Company, for the rents, income and profits derived from the property in this District from the time of notice served and demand made for the possession of the property, and his refusal of such demand, to the time of accounting; (3), That said Johnson as assignee be required to pay into the registry of the court, to abide the final decree in the case, the money received from the insurance companies on the policies of insurance obtained by him on the property in this District, which was destroyed by fire, and that the complainant be decreed to be entitled to a lien or equitable right to such insurance money for the better security of the said bonded indebtedness; (4), That a decree of foreclosure by sale be passed, and that the property be sold for the payment of the balance of the mortgage debt; and for general relief.

The defendants, the American Ice Company, and Johnson, the assignee, by their answers, whilst admitting most of the facts alleged by the complainants, strongly controvert the right of the complainant to the relief sought by it. They deny the right to have a receiver appointed, and to any account for rents received, or for the insurance money received by Johnson, the assignee; and they deny the right to a decree for sale or foreclosure of the premises situate in the City of Washington, until an account be regularly taken of the money received for sale and rent of the property situate in the State of Maine. They also question the validity of the sale of the property situated in Maine.

The court below, by its decree, denied all the relief prayed for by the complainant, except the right of foreclosure and sale of the mortgaged premises, for the payment of a balance due of the bonded indebtedness of $21,350, with interest thereon from the 2d day of December, 1892, as ascertained and declared by the decree, without the statement of any preliminary account; and a decree of sale was passed, and trustees to make the sale were appointed. From this decree both parties have appealed.

1. The first question is, Whether a receiver ought to have been appointed? We entirely agree with the court below that the facts of this case did not warrant the appointment of a receiver. As stated in the decree, it is shown that all

the improvements on the realty had been destroyed by fire, and that there was no rent or income receivable from the property. There was nothing, therefore, to create a necessity for the office of a receiver. But apart from this, the mortgage itself had provided a summary mode of taking possession and disposing of the property, in default of payment by the mortgagor. There is no charge of willful waste of the property, and the power given by the mortgage to the trustee "to enter upon the premises or property granted, and to take possession of the whole or any part thereof, and to sell and dispose of all and singular the premises," etc., would seem to render it entirely unnecessary that a receiver should be interposed. After the lapse of ninety days from the time of default made, this summary and speedy remedy was open and available to the complainant. It is a well settled principle that a receiver will not be appointed when the mortgagee, or a trustee representing mortgage bondholders, has a complete and adequate remedy at law in respect to the possession and of the matters on account of which the appointment of a receiver is sought. Therefore, if the mortgage authorizes the trustee upon a default to take possession and to collect all tolls, rents and profits of the mortgaged premises, a receiver will not be appointed for the mere purpose of obtaining possession pending a foreclosure suit, when it is not shown that the trustee has attempted to obtain possession of the property by entry or by suit at law. Jones Corp. Bonds and Mortgages, Sec. 436. In this case, it is shown that, after default, there was an attempt to obtain the possession by the Trust Company, but by process and in a manner not authorized by law. Willis *v.* Eastern Trust and Banking Company, 169 U. S. 295. That attempt, therefore, was entirely abortive, because not within the power given by the mortgage.

It is the settled doctrine, therefore, resulting from the principles just stated, as very clearly enunciated by Mr. High, in his work on Receivers, Sec. 555, that "the aid of an injunction and a receiver will not be granted in a contest concerning the possession of real property, when adequate redress may be had at law in the usual forms of action appropriate to such end; and in all such cases, equity will

leave the parties to pursue their legal remedy." The whole question as to the state of facts that will or will not justify the appointment of a receiver in respect to the contested possession of real property, is thoroughly discussed, upon full review of the decisions, by Mr. High, in his valuable work on Receivers, in Chap. XIV; and especially in cases of the character of the present, in Sections 555 to 567.

But independently of the grounds just stated for the refusal to appoint a receiver, there is still another ground, and that is, that before the bill in this case was filed, the case instituted by the United States, under a special act of Congress, against Morris and others, known as the Potomac Flats Case, in which the title to the property here in controversy is involved, was pending in the Supreme Court of this District; and before this case was decided by the court below, the Potomac Flats Case had been decided, and the title to the particular property here in question had been adjudged to be in the United States. An appeal from that decree had been taken to the Supreme Court of the United States, and that appeal has been recently argued, but the case has not yet been decided, and, consequently, the decree appealed from still remains in full force. While that decree remained unreversed, it could hardly have been expected that the court below would have appointed a receiver to claim possession of the premises in hostility to the title adjudged to be in the Government of the United States. This of itself would have been sufficient ground upon which to refuse the appointment of a receiver.

2. The next question presented is that in regard to the rents received by the assignee Johnson from the tenant of the property here in Washington City, before the improvements on the property were destroyed by fire; the complainant claiming to be entitled to those rents from the expiration of the ninety days' notice given and demand made for the surrender of the premises, under the Landlord and Tenants' Act of this District, that is to say, ninety days after the 30th of July, 1894, to the time of filing the bill. That proceeding, however, was ultimately held by the Supreme Court to be wholly without warrant of law. Willis *v.* Trust and Banking Company, *supra*. That demand, there-

fore, was not a legal demand for the surrender of the premises, within the power given by the mortgage of entry and possession, in order to make sale under the power. And not being entitled to the possession under the proceeding taken, the complainant as mortgagee was not entitled to the rents of the property; for until the mortgagor, or its assignee, *had been lawfully dispossessed*, it was entitled to receive the rents and profits of the mortgaged premises. This is the established doctrine. Wilder *vs.* Houghton, 1 Pick. 87; Mayo *vs.* Fletcher, 14 Pick. 525; Russell *vs.* Allen, 2 Allen, 42; Watts *vs.* Coffin, 11 John. 495; Chinnery *vs.* Blackman, 3 Douglass, 391; Hughes *vs.* Edwards, 9 Wheat. 500.

In the case of Teal *vs.* Walker, 111 U. S. 242, the Supreme Court of the United States, in considering this question, say:

"We believe that the rule is, without exception, that the mortgagee is *not entitled* to demand of the owner of the equity of redemption the rents and profits of the mortgaged premises, until he takes *actual possession*. In the case of Moss *vs.* Gallimore, 1 Doug. 279, Lord Mansfield held, that a mortgagee, after giving notice of his mortgage to a tenant in possession holding under a lease older than the mortgage, is entitled to the rent in arrear at the time of the notice, as well as to that which accrues afterwards. This ruling has been justified on the ground that the mortgagor, having conveyed his estate to the mortgagee, the tenants of the former became the tenants of the latter, which enabled him, by giving notice to them of his mortgage, to place himself to every intent in the same situation towards them as the mortgagor previously occupied. Rawson *vs.* Eicke, 7 Ad. & El. 451; Burrows *vs.* Gradin, 1 Dowl. & L. 213.

"Where, however, the lease is *subsequent* to the mortgage, the rule is well settled in this country, that, as no reversion vests in the mortgagee, and no privity of estate or contract is created between him and the lessee, he can not proceed, either by distress or action, for the recovery of the rent. Mayo *vs.* Shattuck, 14 Pick. 533; Watts *vs.* Coffin, 11 John. 495; McKircher *vs.* Hawley, 16 Id. 289; Sanderson *vs.* Price, 1 Zabr. 637; Price *vs.* Smith, 1 Green's Ch. 516." The same principle is laid down in Bacon's Abridgment, Tit. Mortgage C., and in 4 Kent. Com. 157.

And in the case of Willis *vs.* Eastern Trust and Banking Company, 169 U. S. 295, the case involving the right of the present complainant to proceed under the Landlord and Tenants' Act to recover the possession of the mortgaged premises, the Supreme Court say:

"Until the mortgagee takes *actual possession*, the mortgagor is not liable, without an express covenant to that effect, to pay rent, and is entitled to take the rents and profits to his own use. (Citing Teal *vs.* Walker, *supra*, and Freedman's Sav. Co. *vs.* Shepherd, 127 U. S. 494, 502.)

"The result is that the plaintiff is not entitled to maintain this process, but must be left, so far as the aid of a court of justice is requisite to secure the rights conferred by the mortgage, to the appropriate remedy of a writ of ejectment, or a bill of foreclosure. Comp. Stat. D. C., Ch. 48, Sec. 1; Ch. 55, Sec. 10; Hogan *vs.* Kurtz, 94 U. S. 773; Hughes *vs.* Edwards, 9 Wheat. 489."

The complainant never having received the actual possession of the property, it has no claim to the rents and profits that have been received by Johnson, as assignee of the Ice Company, and therefore the court below was quite right in decreeing that the complainant was not entitled to any accounting for and in respect to such rents.

3. The next question is as to the liability of Johnson as assignee of the Ice Company to account for and pay over, for the benefit of the bondholders, the insurance money received by him as assignee of policies obtained by him on the mortgaged property, with assets derived from the Ice Company, the mortgagor. Johnson claims and contends that this insurance was not obtained in execution of the covenant contained in the mortgage, for the benefit of and as additional security to the bondholders, but was obtained by him as assignee for the benefit of the creditors generally of the Ice Company, including, of course, the bondholders as part of such creditors. But the complainant contends that whatever may have been the intention or understanding of Johnson as assignee, in obtaining the policies and paying the premiums for the risks out of the assets of the Ice Company, he was only doing what his principal or assignor was bound to do by the covenant in the mortgage, and that the

insurance money, in contemplation of both law and equity, inures, by way of priority, to the bondholders, under the covenant. It is certainly true, that Johnson does not occupy the position of a *bona fide* purchaser without notice. He is in the shoes of the Ice Company, and can occupy no better position than the assignor itself, with respect to the property assigned. His relation to the assignor is of a representative nature. By taking the assignment for the benefit of all the creditors, he did not extinguish or modify the covenant to insure, nor did he relieve the property of the charge to sustain, at all times, the insurance on the property for the protection and as an additional security of the bonds held under the mortgage. The insurance was a part, and a very important part, of the scheme of security for the redemption of the bonds; and as such it should not be impaired or avoided by placing the property in the hands of an assignee. The property itself was charged with the obligation of maintaining the insurance, and Johnson taking the property in his representative capacity, and placing himself in the position of his assignor, took the property *cum onere*. Having assets of his assignor sufficient to pay the premiums for the insurance required by the covenant, a court of equity would compel him to effect and maintain the insurance as required by the covenant. This principle is well illustrated by the case of Holmes *vs.* Buckley, Equity Cases, Abridged, 26. In that case an assignee in fee was compelled by a court of equity to fullfil the covenant made by his assignor, to keep open and in repair a water course, granted by the latter out of the land. And when a covenant is capable of running with the land, its burden will, of course, pass to the assignee of the legal estate, although merely a trustee; but equity in this, as in other cases, considers him as a mere instrument, and holds the parties really benefited as the parties answerable. Berry *vs.* McMullen, 17 Sergt. & R. 84.

But it is contended on the part of the defendants, Johnson and the Ice Company, that a covenant to insure and keep insured improvements on real estate, is a mere personal covenant, and does not attach to and run with the land. This, as a general proposition, may be conceded. But whether a covenant to insure and keep insured buildings on

real estate runs with the land or not depends upon the special object and terms of the covenant. There is no doubt that it is entirely competent to the parties by apt and express terms, to charge such covenant upon the land, and to make it run with the land and to create a burden thereon in the hands of grantees or assignees; and if it can be done by express terms, there is no reason for saying that it can not be done, upon fair and reasonable implication, to accomplish the objects and purposes of the parties. The object of the covenant in this case is plain enough, and so the terms in which it is expressed. The American Ice Company expressly covenants to keep the property *at all times insured*, in such amounts as shall *reasonably protect* all the insurable property, payable, in case of loss, to the trustee, as its interest should appear; and in case of loss the insurance money might be applied by the trustee *toward the renewal of or addition to the property destroyed or injured*, or it might be, at the option of the trustee, placed in a sinking fund for the redemption of the bonds.

It is very clear, that, by the terms of the covenant, it had relation to the land, and its principal object was to keep and maintain the buildings on the property in condition for carrying on the ice business. This was the great object of the insurance required, as means of security to the bondholders. Without this, the property, by fire, might be rendered of little value, and the bondholders be left without security. By means of the insurance it was intended that the property should be maintained as security; and hence it was provided, primarily, that the insurance money might be expended in renewal of or adding to the buildings. In such cases it has been repeatedly held, that the covenant does run with the land, at least in an equitable sense; and where an insurance has been obtained, though by an assignee, and a fire has occurred, and the insurance money has been received, a court of equity has held that the insurance money should be applied for the benefit of those for whose protection the original covenant was made.

In the case of Vernon *vs.* Smith, 5 Barn. & Ald. 1, 7, an action at law, it was held that a covenant to insure against fire of the premises situated within the weekly bills of mor-

tality, as prescribed by the statute, was a covenant that ran with the land,—the insurance money being required to be expended in restoring or repairing the building. In that case, Lord Chief Justice Abbott, said: "A covenant to lay out a given sum of money in rebuilding or repairing the premises, in case of damage by fire, would clearly be a covenant running with the land, that is, such a covenant as would be *binding on the assignee of the lessee*, and which the assignee of the lessor might enforce. Here the defendant does not covenant expressly in those words, but only that he will provide the means of having 800*l.* ready to be laid out in rebuilding the premises in case of fire. But connecting that covenant with the act of Parliament, the landlord has a right to say that the money, when recovered, shall be so laid out. It is, therefore, as compulsory on the tenant to have the money laid out in rebuilding, and as beneficial for the landlord, as if the tenant had expressly covenanted that he would lay out the money he received in respect of the policy upon the premises. For these reasons, I think that this is a covenant running with the land," etc. And the other judges of the King's Bench concurred in that opinion.

In the well known case of Thomas *vs.* Vonkapff, 6 Gill & John. 372, the principle is applied to a state of facts somewhat different but analogous to the facts of the present case; but the principle would seem to be fully applicable to the facts here presented. There the mortgagor covenanted that he would at all times during the existence of the mortgage lien, at his own proper cost and charge, cause and procure the insurance on the premises against loss by fire, already effected, to be kept up and renewed; and that, in case of loss by fire, the sum insured to be immediately applied to rebuilding, replacing, and putting the said property in good order and condition, so that the mortagee, his heirs, etc., shall, in case of loss by fire, be benefited by such insurance, or participate in the benefit thereof, to the extent of his aforesaid lien. On that state of case, it was held that the covenant to insure or keep insured did run with the land; and that the design of the covenant was, by the insurance, always to have a fund for re-establishing the premises, so that the security should not be in any manner diminished. That

the insurance was one for the benefit of the mortgagee, to the extent of his lien; and that as the mortgaged property was clothed with a trust in reference to this fund, the legal representatives of the mortgagor must also take it subject to the trust. And the court in its opinion said: "When the mortgagor received the insurance money, a court of equity would have considered him in the light of a trustee of the fund, and would have caused the whole of it, or such parts thereof as might be necessary to restore the premises to their former situation, to be expended in rebuilding. The mortgagee had undoubted rights in the fund thus arising, which could not be overreached by Thomas or his creditors, and if the property was thus clothed with a trust, his legal representatives must also take it subject to the same trust." And in concluding their opinion the court say: "We have said that although a lien existed, it gave no right to the possession of the fund, as against Thomas; the design being to apply it for the purpose of reinstating the premises. But the facts show that the lien can not in the terms of the contract be specifically enforced, owing to the sale of the mortgaged premises. A court of equity, however, is not on this account powerless. It must administer relief in the only manner in which it can now be done. As the leading object in effecting the insurance was exclusively a beneficial one to the mortgagee, its great spirit and object will be effectuated by decreeing him the fund. The mode only, of giving relief, will be changed, and that has become inevitable."

In the present case, unlike the case just referred to, the covenant requires the money, in case of loss by fire, to be paid over to the trustee, to be by it applied in the manner prescribed.

In the case of Wheeler *vs.* Insurance Co., 101 U. S. 439, it was held by the Supreme Court to be a well settled principle, by many decisions in this country, that if the mortgagor is bound by covenant or otherwise to insure the mortgaged premises, *for the better security* of the mortgagee, the latter will have *an equitable lien* upon the money due on the policy taken by the mortgagor to the extent of the mortgagee's interest in the property destroyed; and the court cites with approval, and in support of the proposition stated, the case

of Thomas' Admr. *vs.* Vonkapff's Exr., 6 Gill & John. 372.

The case of *In re* Sands Ale Brewing Co., 3 Biss. Rep. 175, is quite in point with the present case. There the Brewing Company had borrowed money and gave a mortgage of its property to secure payment. The mortgage contained a covenant requiring an insurance to be made and the policy to be assigned to the mortgagee; and that in the event that the premises should be injured or destroyed by fire, the mortgagee should have the right to collect the insurance money and apply it, in his discretion, either in the discharge of the mortgage debt, or in repairing or rebuilding the buildings injured or destroyed. The insurance was made and assigned as required by the terms of the covenant. And when the policy expired, a new policy was taken out, but not assigned to the mortgagee. The mortgagor had become bankrupt, and the buildings were destroyed by fire, and the assignee in bankruptcy had collected a part of the insurance money, and denied the right of the mortgagee to receive it. Whereupon the trustee under the mortgage or deed of trust filed a petition, asking that the insurance money, so collected and held by the assignee in bankruptcy, should be required to be paid over to the trustee to be applied in satisfaction of the mortgage debt. That application was granted, the court holding that the mortgagee was entitled to the fund. And in the course of its opinion, the court said: "The assignee in this case can hold nothing that the grantor in the trust deed could not have held, if bankruptcy had not intervened. His relation is purely representative. Creditors who have trusted the bankrupt must be held to have done so with full notice of the covenant to insure, and of the legal and equitable effect of the covenant. The covenant to insure runs with the land as much as a covenant to repair and rebuild, or for another term."

The same principle, though predicated of facts somewhat different, is announced in the cases of Miller *vs.* Aldrich, 31 Mich. 411; Ellis *vs.* Crutzinger, 27 Mo. 311; Nichols *vs.* Baxter, 5 R. I. 491; Masury *vs.* Southworth, 9 Ohio St. 348. The fact that the insurance was taken out by the assignee for the benefit of all the creditors of the assignor, and not by the assignor itself, can, as is shown by some of the

cases referred to, make no manner of difference. If the insurance had been obtained by the Ice Company, instead of its assignee with the assets of the former, there could be no question of the right of the bondholders to have the money applied, as required by the covenant, as against the general creditors of the mortgagor. If the covenant runs with the land, as the authorities would seem to make clear, and the assignee took the property subject to that charge, though he may have taken out the policies for the professed benefit of all the creditors, including the bondholders, yet, by force of the covenant, the bondholders are entitled to priority in the application of the fund. We are of opinion, therefore, that the court below was in error in denying the right of the bondholders to this insurance fund.

4. With respect to the question made as to the validity of the proceedings of the trustee in selling or attempting to sell the property situate in Maine, and the application of the proceeds of that sale, we shall not go into any extended examination. There is no fraud charged, and no such irregularities shown, as furnish the foundation for impeaching the fairness and good faith of the sale that was ultimately made. The deed of trust was made in Maine, and the sale of the property, situated in that State, was made there; and we must suppose, in the absence of any affirmative evidence to the contrary, that the sale was legally and fairly made. Both the law of the contract, and of the *situs* of the property sold, was that of Maine; and it does not appear that the sale has ever been questioned in that jurisdiction. We must therefore assume that the sale was validly made, according to the law and practice of that State.

But the question of the distribution and application of the proceeds of sale, may affect, under the terms of the deed of trust, the American Ice Company and its general creditors, claiming under the general assignment to Johnson. Hence they have a right to a strict account of the proceeds of sale of the property in Maine. As to what allowances for disbursements, expenses, commissions, etc., are proper, will be for the court here to decide, in order to make proper distribution of the proceeds of sale of the property in this jurisdiction. That such exhibits should be made, and a proper

account stated as preliminary to the decree of sale of the property here, we think is proper and necessary. Until this account is stated it can not be determined with certainty for what amount the decree for foreclosure and sale should be passed, or what amount of indebtedness is still due.

The sale of the property, however, under any decree that may be passed, should not be allowed to be made until after the case of Morris and others *vs.* United States, known as the Potomac Flats Case, now pending in the Supreme Court of the United States, shall have been decided; for otherwise the sale of the property made subject to the final decision of that case, could not be other than a mere speculation, and would most likely result in obtaining nothing more than a mere nominal sum.

Upon review of the whole case, we are of opinion that the decree of the court below must be reversed on both appeals, and the cause be remanded for further proceedings; and that the costs of said appeals be equally divided between the parties appellants, and that they pay accordingly; *and it is so ordered.*

Decree reversed and cause remanded.